

PLEASANT VALLEY ZONING BOARD OF APPEALS
January 26, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on January 26, 2006, 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
 Lisa Rubenstein
 Rob Maucher
 Ronald Vogt
 Tim Gerstner, Alternate

Member absent: Helene Czech
 Christina Perkins

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #868 – ALOS – VARIANCE

Mr. Dunn reported that the applicant is requesting a variance to subdivide her lot and that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 1/18/06
- Comment form from the Pleasant Valley Fire Advisory Board: “no comment as the proposed site improvements do not present any fire or safety issues.”
- Pleasant Valley Planning Board: positive recommendation
- List of adjacent property owners who have been notified of tonight’s meeting

John O’Brien, Jr., 27 Hurley Road, Salt Point, NY 12578 was sworn in.

Ms. Rubenstein noted that Mr. O’Brien is not listed on the application. Therefore, Anita Alos, 27 Hurley Road, Salt Point, NY 12578 was sworn in.

Mr. O’Brien stated that they own 4 acres and that they first went to the Planning Board, had a survey done, and divided it into two 2-acre lots. The Planning Board said that they should make one lot 2.2 acres with the road frontage taken out, making the other lot a little smaller and then apply for the variance. He stated that the next three houses down the road are 2.1, 2.2, 2.3 acres and with the road frontage taken out, they are all less than 2 acres. This was in 1987.

Ms. Rubenstein asked who owns the easement. Mr. O’Brien said that that is a good question. Ms. Rubenstein pointed out that, if it is an easement, it’s still owned by the underlying property and asked the applicant if they have a deed to the property.

Mr. O’Brien stated that they did an overlay of the old road compared to the new one, and that it’s kind of all over the place. Ms. Rubenstein stated that the question is how much property the applicant owns. Ms. Alos stated that she owns 4 acres. Mr. O’Brien stated

that the Planning Board advised them that 25' of road frontage must be taken and, therefore, be deducted from the square footage of the lot. As a result it would make the subdivision non-conforming in this 2-acre zone. He stated that he is confused because of the nearby properties that are already non-conforming as a result of this situation.

D. Friedrichson stated that there is a section in the Code that authorizes the Superintendent of Highways to do maintenance and maintain sight distance on 25' either way from the center of the road. He stated that this portion of the Code does not address ownership, but rather addresses the right-of-way rights.

Ms. Rubenstein stated that this is the second application of this type to come before the ZBA and that she thinks the Board should ask for a legal opinion. She stated that it is her opinion that, if their deed shows this as an easement, then they have 4 acres and may do whatever they want to subdivide their property and do not need a variance. If, however, at some time in the history of the property a current or previous owner deeded and actually gave the Town property, then they do not have enough acreage to subdivide.

Mr. O'Brien stated that he read somewhere in the deed some language that addresses this question. Ms. Rubenstein clarified that the ZBA has no ability to permit applicants to create an undersized lot. Mr. O'Brien stated that the Planning Board would rather make one conforming lot and get a variance for one non-conforming lot and, again, pointed out that other nearby lots are non-conforming. Ms. Rubenstein stated that the ZBA really needs to get an opinion from the Town attorney. Mr. O'Brien asked whether the Town attorney was present at the Planning Board's meeting. Mr. Friedrichson stated that the Planning Board's attorney was present, but not the Town's attorney. Mr. Vogt reiterated that, by law, the ZBA cannot authorize applicants to create a substandard lot.

Mr. O'Brien stated that they had the property surveyed two different ways:

1. one 2.2 acre lot; and one 1.8 acre lot
2. two equal sized 2 acre lots

Mr. Vogt stated that the ZBA needs to see what their deed says exactly. Ms. Rubenstein stated that the ZBA does not know whether the road frontage is a deeded right-of-way or an easement. Ms. Alos stated that she's owned the property for 20 years and that she did not have a title report done when she purchased the property. Ms. Rubenstein pointed out that it is possible that there is a reference in a prior deed and that the ZBA needs an abstract of title. However, Ms. Rubenstein stated that she's reluctant to make the applicants go through that effort before the ZBA gets an opinion from the Town attorney. She stated that, if the Town attorney's interpretation is that one cannot calculate that easement area as part of your lot size, that's an interpretation that should be discussed as a policy issue. If the interpretation is that the easement area cannot be included in the square footage of the lot, then the ZBA cannot grant a variance because that would create a substandard lot.

PUBLIC HEARING OPENED

Mr. Dunn asked if there is anyone present who would like to speak to this application. No one spoke.

Mr. Dunn stated that the ZBA will keep the Public Hearing Open so that the applicants may go home to get their deed and come back for the ZBA to review it.

Application is on 2nd Call.

CONTINUED - #868 ALOS VARIANCE

Ms. Alos and Mr. O'Brien returned to the meeting and Mr. Dunn noted that Mr. John O'Brien, Jr., and Ms. Anita Alos are still under oath. Mr. O'Brien stated that they found two descriptions, one of which says "subject to the rights of the general public to use that portion of the above-described parcel..." Further, Mr. O'Brien quoted: "together with the right of ingress or egress over any street or road in front of the adjoining property."

Ms. Rubenstein reviewed the document Mr. O'Brien was quoting from and stated that it provides a title history. Mr. O'Brien stated that the surveyor surveyed the whole property. Ms. Rubenstein stated that the deed dated 1972 may or may not be correct as there is no guarantee that the property was surveyed at the time. Mr. O'Brien stated that the surveyor went to the first survey with the original road and that it is completely different now. Further, he stated that some of the deeds go back to a stone wall and that stone wall is no longer there. He stated that he spoke to the neighbors about getting a little piece of property and that he really did not want to infringe on them.

Ms. Rubenstein stated that she thinks this is an issue, since it has come up before, that the Board needs a legal opinion on. She stated that somewhere along the line the property includes a 50' easement but that she cannot see how that translates into reducing the owner's ability to subdivide the property. Mr. O'Brien noted again that a precedent has been set by nearby properties. Mr. Rubenstein stated that the ZBA sent the last applicant away who had this issue and told them that as far as the Board was concerned they had 4 acres. Ms. Rubenstein stated that she thinks this needs to be referred to the Town attorney because it is an issue that the Town needs to address. Mr. Friedrichson noted that there are different kinds of roads: dedicated, and a road by user. Ms. Rubenstein noted that this is a road by user. Mr. Friedrichson stated that a dedicated road is owned by the Town, whereas road by user refers to a right of way and that ownership remains with the land owner. Mr. Friedrichson stated that the 50' right of way does not belong to the Town. Ms. Rubenstein stated that she is not aware of anything in the Code that says that this right of way does not belong to the property owner. She stated that it is still their property.

Ms. Rubenstein stated that she thinks the ZBA should refer it to the Town attorney for a legal opinion. She noted that the Planning Board is recommending that the ZBA grant the variance, but that the ZBA cannot grant that kind of a variance. She stated that the legal issue is, if there is a Town easement over the property, does that diminish the size of the property such that the owners would not be able to subdivide? She noted that the applicant has a survey that says they have 4 acres and that the Planning Board has

referred the application to the ZBA because there is an easement over the property which may prevent the owners from subdividing.

Mr. Dunn noted that the ZBA cannot set a precedent by creating an illegal substandard lot. Mr. Vogt and Ms. Rubenstein agree that the ZBA should refer the problem to the Town attorney for a legal opinion. Ms. Rubenstein explained to the applicant what the impact would be if the ZBA were to grant a variance to create a substandard lot – set a precedent for others to submit similar applications. She noted that she thinks these applicants have a right to subdivide without a variance; however the ZBA needs legal advice. She noted that the applicant owns the property which is subject to an easement and that the question is what the Town policy says on this situation.

Mr. Dunn noted that once the Town attorney addresses the problem the ZBA will have a definitive answer that will either disallow the variance or allow the subdivision without need for a variance. Mr. Dunn noted that once the Town attorney comes back with a ruling, the ZBA is bound by it.

Mr. O'Brien provided a copy of the abstract of title to the ZBA.

PUBLIC HEARING REMAINS OPEN

Mr. Christopher Arnone, 40 Hurley Road, was sworn in and stated that he owns the property across the road and that he does not have a problem with them building a house. He stated that he hopes that, if the applicant does subdivide, they will create two 2-acre lots and that the tax map would reflect that. He also stated that he has a couple of easements on his property, that it is his property, that the park uses it, that the Town uses it. Also, he stated that there is a Central Hudson easement on his property. He stated that he pays the taxes on all of it. He stated that his property line stops before Hurley Road. He stated that he was there with the original surveyor, Harry Bly, and his crew 5-6 years ago when he had it surveyed prior to building his home. He stated that the surveyor showed him where the rods were and marked them from Hurley Road with the guard rail there. He stated that he had a bit of a cushion between the actual road and his property line and that they said it was technically the Town's property. He stated that he's across the street from the applicant and that this was what he was told. He stated that he has surveys. Further, he stated that there are people on the road that are utilizing the Town's property to give them the 2-acre subdivision they needed to build and that they are paying taxes on 2 acres, and that he thinks it's only fair that this applicant be allowed to utilize the full 4 acres for subdivision.

PUBLIC HEARING CLOSED

The Board told the applicants that their application will be adjourned to the next ZBA meeting in February 2006.

Ms. Rubenstein clarified that, if the Town attorney determines that the applicants have 4 acres that they can subdivide, they do not need to return to the ZBA. However, she noted that the Planning Board must be notified of the decision.

Ms. Rubenstein stated that the policy issue is: does the easement land get subtracted from the property for the purposes of considering a subdivision. If the answer to that is no, it is up to the applicant to go to the Planning Board and establish that they have 4 acres. The ZBA will not grant a variance to create an undersized lot even if it is 1/10th of an acre short. She noted that it is up to the Town to determine whether they have 4 acres and that this is the only policy issue that the ZBA is addressing. Mr. Vogt noted that the only way people would have a buildable lot less than a standard is if it were created before zoning, which would be called a non-conforming buildable lot. Mr. Vogt stated that it would have to have been a lot that was subdivided prior to zoning. Mr. Dunn stated that if he had a ½ acre lot that existed prior to 9/26/1974 as long as it had access to the road, it would be a non-conforming lot.

2. APPEAL #869 – FISCHER – VARIANCE

Mr. Dunn noted that the applicant was denied a construction permit at 183 Bower Road in a ROA zone for an addition to his house. Mr. Dunn noted that, because of the size of the lot and the lot line, a variance is requested. He also stated that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 1/18/06
- Comment form from the Pleasant Valley Fire Advisory Board: “no comment as the proposed site improvements do not present fire or safety issues”
- Planning Board: positive recommendation
- List of adjacent property owners who were notified of tonight’s meeting
- Application for a building permit

Daniel Fischer, 183 Bower Road, Poughkeepsie, NY 12603 was sworn in and stated that he is increasing the footprint by about 120-130% - the current home is 20’ x 23’, which will remain. He is adding stairs on one side and a deck and an addition in the back.

Mr. Dunn noted that one of the problems is that Code calls for a minimum of 15’ from the property line. However, he stated (and Mr. Friedrichson corroborated) that a 2-story building has to be either 15’ from the property line or, if the building is higher than 15’, then the distance must be equal to the height of the building and ½ the roof. Therefore, Mr. Dunn noted that where the applicant initially asked for a variance of 3’, he actually needs a variance of 11’10”. Mr. Dunn noted that this is a substantial variance.

Mr. Vogt asked how old the house is. Mr. Fischer stated that it was built in 1940. Mr. Vogt noted that it, therefore, predates zoning.

Mr. Vogt asked the applicant if there is any other way he can accomplish what he is looking for without the two-story height. Mr. Fischer stated that he had drawn a one level house that ended up being 65’ long and did not give them the same amount of square footage that the two story addition provides. Therefore, he stated that is why they are going up and are not trying to take up more land mass in the process. In addition, he

stated that the footprint they are using incorporates an unused deck and a deteriorating bathroom and laundry room. Mr. Fischer pointed out that the proposed deck can be eliminated if this would increase their chance of receiving the variance.

Ms. Rubenstein asked if Mr. Fischer has spoken to the neighbors. Mr. Fischer stated that he has spoken with his neighbors and that they all told him that they received letters and are in support of their project. He stated that he encouraged them to come to tonight's meeting.

Mr. Dunn and Mr. Vogt stated that they visited that site. Mr. Dunn noted that the proposed two story addition is so close to the building on the right that it gets a little scary. Mr. Vogt stated that it will be overpowering because they will be half the height of their building to the lot line, and that if there ever were an issue with the construction, the house would fall onto the neighbor's house and not on the applicant's land. Mr. Dunn stated that that is something the ZBA must be concerned with because the distance required by the Code is not arbitrary and is calculated precisely for safety. Further, Mr. Dunn stated that the fact that the neighbors are close now is something that existed prior to zoning. He stated that now the ZBA is charged with trying to alleviate any hardships an applicant might have but also to try to stay within zoning as much as possible.

Ms. Rubenstein asked what the distance is to the house on the other side that it beyond the tree line. Mr. Fischer stated that they are 17' from their property line. She noted that the neighborhood is pretty tight. Mr. Fischer stated that the house on the opposite side is about 15' to 17' from the line.

Mr. Dunn asked what the current square footage of the house is. Mr. Fischer stated that it is less than 650 square feet. Mr. Vogt asked the size of the addition. Mr. Fischer stated that upstairs and downstairs is increasing the total by 1250 square feet. Mr. Vogt noted that Town law says that with a non-conforming structure any increase in square footage may not be more than 50%.

Ms. Rubenstein stated that, technically, she does not think this is a non-conforming building. Mr. Vogt stated that it predates zoning and is non-conforming. Mr. Dunn noted that the zoning is ROA. Ms. Rubenstein noted that it is a residential property and, therefore, is conforming within the zone. ROA is ½ acre and this property is less than ½ an acre (.31 acres), and is therefore non-conforming. Ms. Rubenstein stated that, typically, non-conforming refers to commercial buildings in residential zones or residential buildings in commercial zones. Mr. Dunn concurred that that is what comes to the ZBA for the most part. Mr. Vogt reminded the Board of the application on Traver Road where the applicant had a non-conforming property with the same issues. Mr. Vogt noted that, in that case, the applicant reduced the size of the addition so that it increased less than 50 % which enabled the ZBA to grant the variance.

Board reviewed the Code. Ms. Rubenstein, Mr. Dunn, and Mr. Vogt clarified which section of the Code applies to this application. Ms. Rubenstein stated that perhaps 98-30 applies if the Board thinks it is a non-conforming building but that it is a conforming use

under 98-31. Mr. Vogt stated that if the property, itself, is less than the acreage, then it is a non-conforming property. Ms. Rubenstein stated that property is not one of the words in the Code and that the Board's choices are non-conforming building or non-conforming land use. She stated that she does not believe the Board can say that it is a non-conforming land use because it is a residential use in a residential zone. Further, she stated that she is not sure that she agrees that it is a non-conforming building. She suggested that the applicant get some legal advice and have an attorney come before the ZBA regarding this issue. She stated that the Board has some issues with whether it's appropriate to allow a variance for the property being this size and the proposed increase in the size. She suggested that the applicant get some legal advice to make an argument that would satisfy the Board. Mr. Fischer asked how to go about doing that. Ms. Rubenstein suggested that he get a land use attorney and that the application can be adjourned to a future meeting.

Mr. Dunn also pointed out to the applicant that for the variance to be approved, 4 of the 7 votes must be in favor of the variance – this being a 7 member Board. And, he noted that only 5 members are present this evening and it is unlikely that 4 would vote in favor this evening.

Ms. Rubenstein suggested that Mr. Fischer get legal advice and tell an attorney that the ZBA raised some issues about whether his design is a non-conforming building and whether the ZBA can grant the size variance requested under the Code. Mr. Dunn also advised Mr. Fischer that he might have a better chance appearing before the full 7 member ZBA.

PUBLIC HEARING OPEN

No one spoke.

PUBLIC HEARING AND APPLICATION IS ADJOURNED.

Ms. Rubenstein stated that if the neighbor on the right who is so close wanted to come and tell how they felt about the project it might be an interesting piece of information for the ZBA to consider. Mr. Dunn suggested that Mr. Fischer get all the ammunition he can get – talk to neighbors and talk to an attorney.

3. APPEAL 870 – DAMSKY – VARIANCE

Mr. Dunn reported that the applicant, Julie Damsky, 35 Rossway Road, Pleasant Valley, NY wishes to build a run-in for her horse to be located 80' from her property line in an R-2 zone. The file contains:

- Pleasant Valley Planning Board: positive recommendation
- Fire Advisory Board: no comment
- Affidavit of publication in The Poughkeepsie Journal dated 1/18/06
- List of adjacent property owners who have been notified of tonight's meeting
- Application for a building permit
- Notarized letter from Charles P. & Jean M. Schappach, dated 1/26/06, of 33 Rossway Road, Pleasant Valley, NY (original on file): object to the variance –

“she has 9.4 acres of property and can better locate her horse run-in shed so that it will not impact the environment both ecologically and environmentally by possibly contaminating the water table.”

Julie Damsky was sworn in and submitted a survey for the Board’s review. Ms. Damsky asked what the date of the Schappach letter was and stated that Mrs. Schappach had opposed Ms. Damsky’s first application for a variance but that Ms. Damsky had spoken to her since then and that Ms. Schappach indicated that she had no problem with the application. Thus, Ms. Damsky wondered whether this letter was old or if it were current. The Board provided Ms. Damsky with a copy of the letter dated 1/26/06.

Ms. Damsky reported that:

- the shed is pre-made,
- there will be no foundation,
- it is a movable structure,
- there will be a gravel base.

Ms. Rubenstein clarified that the ZBA denied the previous application and asked Ms. Damsky to describe the proposed location of the shed.

Ms. Damsky stated that this is an ironic case because she wants the variance in order to protect the pond, not to hurt it. She stated that she wants to move the shed as far away and that it must face south to be useful. She stated that her horse is 22 years old and that she wants her to hang out in the sun. She pointed out on the survey the area that she plans to fence and explained that the horse would not use the shed if it were located 100’ from the property line because it would be right up against the fence. She pointed out the marshy area. She stated that she has measured the pond numerous times, that she believes it has grown over the years, and that she does not think the drawings are accurate because they are 20 years old. She stated that she does not want the horse anywhere near the pond because it’s marshy and soft.

She showed the Board a view of the whole 9.4 acre property and described a 5-acre wooded area that she wants to maintain as it blocks her view of a new development. She also does not want to disturb any trees. She stated that the terrain there is not good for horses as there are roots and that it’s very wet. She stated that she’s locating the paddock and the shed in a flat area that is dry.

Ms. Damsky stated that the shed will be 100’ from the stream, about 60’ from the pond, and 80’ from the property line. She stated that her original variance asked for 66’. She wanted to preserve a nice area for grazing and did not want to fence in the whole dry part because she wanted to leave some grass. She stated that she did not want to fence in the whole dry part because a horse is a destructive grazer. She pointed out where she wanted to put the shed was a little bit out of the way, but that proposal was denied. Therefore, she stated she has moved the shed out into the open and, instead of using the area for riding, the horse will now have a paddock.

Mr. Dunn clarified that the original application was for a 34' variance and that this application is for a 20' variance. Mr. Dunn stated that there is a letter in the file from the Plotnik's, owners of a neighboring property that cannot be read into the file because it is not notarized. Mr. Dunn asked Ms. Damsky what would prevent her from moving the shed a little forward and to the left, which would bring it farther off the property line and farther from the stream. Ms. Damsky pointed out that there is a stone wall and that her septic is in that area. She stated that she was told not to even allow a horse to walk in that area. She stated that there is a stone wall with a sharp drop and that she does not want to have a multi-level paddock. She wants everything on the same level and does not want the horse going up and down the stone wall.

Mr. Gerstner asked if the shed could be backed up against the stone wall. Ms. Damsky stated that she wants to be able to see the horse from her house.

Ms. Damsky stated that it looks like she has a lot of room to play with but that right now this time of year it is all under water and one time there were fish swimming in the grass. She stated that she wants to keep everything as far away from the pond as possible and she does not understand the opposition to her efforts to improve and protect the area.

Mr. Dunn stated that the ZBA's charge is to maintain zoning and that zoning says that a structure containing animals must be 100' from the property line.

Mr. Friedrichson clarified that the Code stipulates 100' from a perennial stream that ultimately feeds into the Wappingers Creek. He noted that there is a 100' buffer – protected area – around the stream bed and that a wetland permit would be needed for any controlled activity within that buffer. He stated that a wetland permit was denied for Ms. Damsky's previous application. He stated that she was advised to apply for a variance from the property line setback rather than compromise a wetland. Further, he noted that anything ½ acres or less is not protected under the Wetland Ordinance. Therefore, the pond is not protected, but the stream is.

Mr. Dunn and Ms. Damsky looked at the map and discussed various options for locating the shed. Ms. Damsky pointed out the two locations that she said the shed will be put and noted that originally she had wanted to put it out of the way so that it would not be plopped in the middle of the nice piece of land. She reiterated her efforts to keep it away from the pond. She also explained that the shed must face south, that the closed end must face north to protect the horse from the weather.

Mr. Vogt explained to Ms. Damsky that the ZBA is charged to stay in compliance with the Code and that as long as there is another option, even if it is not aesthetically pleasing, the Board will consider the option. As long as it is 100' off the property line, then there is no issue. Ms. Rubenstein noted that the ZBA weighs the benefit to the applicant versus the detriment to the community in its decisions - that the ZBA tries to consider what the applicant wants and balances that. Mr. Vogt reiterated that the ZBA is charged with exploring other options. Ms. Damsky noted that there are probably other options for locating the shed on the property, including right in front of her house, but

that she had envisioned it tucked away and not blocking her view of the pond. She stated that if she ever sells the property, the new owners would be wondering why she put the paddock and shed right in front of the pond. Ms. Rubenstein noted that Ms. Damsky has made an attempt to minimize the amount of the variance requested and that, although it is a big piece of property, there are some physical conditions of the property that make it make sense to locate it in the vicinity of where she's located it. Ms. Rubenstein remembered the discussion from the previous application of why she didn't locate it on the other side of the pond, which is not really feasible. She noted that Ms. Damsky has made an attempt to minimize the amount of the variance and still accomplish her goals.

Ms. Rubenstein noted that tonight's Board is a 5-member Board and that Ms. Damsky would have to have 4 of the 5 members present vote in favor of her variance for it to be approved.

Public Hearing Opened

Mary Ann Pope, 37 Rossway Road, was sworn in. Ms. Pope stated that she was present for the last Damsky application at which time she testified to her opposition to the application. Ms. Pope stated that she is still opposed to this application. She stated that they first met Ms. Damsky when she came to look at the property one year ago. She stated that Ms. Damsky liked the property and that they had tea and discussed her plans to put the horses on the other side of the stream, thereby preventing pollution to the pond. Ms. Pope noted that putting the horses on the near side of the pond would pollute the pond and the fish. She stated that they owned the property for 29 years and kept it in pristine condition. She stated that Ms. Damsky has expressed a concern for the trees, but that in order for her driveway to be put in, she must have had about 100 huge trees knocked down. Ms. Pope noted that there are piles of dead trees on both sides of her house and that she is very concerned about a fire hazard as a result of these piles that would threaten not only Ms. Damsky's house but also Ms. Pope's house. Ms. Pope stated that it is not a good idea to have horses where Ms. Damsky plans to put them. Also, Ms. Pope stated that horses do smell and they do pollute and there are fish in the pond. She stated that she wonders how long the trout would live if there were a lot of pollution.

Alfred Pope, 37 Rossway Road, was sworn in. Mr. Pope stated that they sold Ms. Damsky the property. He provided the Board with copies of his testimony. The Board provided Ms. Damsky with a copy of Mr. Pope's testimony. Mr. Pope read into the record his written testimony. His main points are:

- pertinent facts regarding wetland, pond, and stream ecology have not changed since first application
- he continues to oppose the variance
- there is substantial land on the 9+ acre property to locate a barn without a variance or issues of odor or pollution – she has many other options
- he stated that Ms. Damsky should be requesting 2 variances: a lot line variance and a 100' wetland buffer variance
- there is no hardship

- site selected for the barn is wetland – noted that originally the property was all swamp land and that the pond was dredged out 35 years ago
- the VonBorstall lot line is wetland, even though it does not show on the maps
- he stated that he owned the land for 26 years, had it appraised, had the assessors walk the land and that it's wet along the stream, it's wet to the north side, and it's wet around the pond, it's wet and spongy after rain
- he referenced the Planning Board minutes of 5/10/05 that state that the Planning Board consistently keeps construction out of wetland buffer areas and that one member of the Planning Board considered the shed a polluting structure because it houses a horse
- he referenced a Pleasant Valley 100' scenic buffer around streams that he stated is on the survey map, which at the time the map was made was 75' and therefore Ms. Damsky is grandfathered

Mr. Pope made the overall statement that the pond is a non-static pond that is approximately 12' deep and has many currents flowing through it. He stated that the basic current comes from the northeast to the southwest and that there is a standpipe that goes into that stream. He stated that any pollution going anywhere in the vicinity of that pond is going to go into the stream and on down the line, pass through Albrecht's farm and into Wappingers Creek. He stated that it is a contiguous wetland. He stated that the only portion that is not a wetland is the part that was dredged up when the pond was created.

Further, Mr. Pope stated that, prior to purchasing the property, Ms. Damsky told him, his wife, and the realtor that she would build a one-horse stable across the stream on the 5 acres there. Mr. Pope stated that they would not have sold her this property if they had believed that she would engage the ecology in this way. He stated that she can enjoy her property and protect the environment and not impose on her neighbors without this variance. Mr. Pope showed the Board a color-coded map that delineates the wet areas and the wooded 5 acres on the other side of the stream that he stated is suitable for the horse. Mr. Pope stated that Ms. Damsky has a solid, viable 2 acres but that she does not want to spend the time or the money to develop it.

Mr. Pope stated that the rules state that zoning variances are not granted unless there is a hardship or an overwhelming thing. He asked if the community includes one person, the neighbor that she will be putting a stable 80' away from. He stated that there is a stable within 300' feet of his property and that when the wind blows right he knows it's there.

Ms. Rubenstein asked Mr. Pope for clarification on his statements regarding what the Planning Board said that the Code requires regarding 100' setback from the pond. Ms. Rubenstein asked if Mr. Pope was quoting from something he heard when he attended the Planning Board's meeting. Mr. Pope clarified that he was reading from the Planning Board's minutes of the 5/10/05 meeting which document that two members of the Planning Board stated their opposition to the application. Ms. Rubenstein stated that she wanted to understand the source of Mr. Pope's information regarding a scenic buffer around streams and the statement he made about the Code requiring a 100' buffer from

any wetland. Mr. Pope stated that he's quoting the minutes of the Planning Board regarding their practices vis a vis wetlands. Further, he stated that he had the land surveyed and that the survey dated 1989 referred to scenic buffer and he read from the map: "75' easement required Pleasant Valley Planning Board Section B2-26 (l) (m)."

Mr. Dunn noted for the record that in Ms. Damsky's previous application she had asked for a 34' variance and that she has now reduced it to a 20' variance.

Ms. Rubenstein stated that she remembers reference to the scenic buffer from the last variance and asked Mr. Friedrichson if he can clarify what that is. Mr. Pope stated that his source of knowledge about this scenic buffer is his surveyor. In an attempt to clarify what the 75' easement is that the survey refers to, Ms. Rubenstein asked whether this could be referring to the wetland portion of the Code. Mr. Friedrichson stated that easements are not used in the Wetland Ordinance and suggested that it may be a setback. Mr. Pope agreed that it is not an easement, that it is a requirement to be able to look there and not see any structures. Ms. Rubenstein stated that it is an interesting use of the word easement.

Mr. Dunn read from the ZBA minutes of the previous application: "Mr. Pope stated that Ms. Damsky only needs 75' setback from the stream, not for environmental reasons but for visual reasons. He referred to Pleasant Valley scenic requirement around the stream bed which was grandfathered. Ms. Rubenstein asked if there is a note on the subdivision plan that restricts any building within 75' of the stream. Mr. Pope responded yes and pointed out the note on the plan." Ms. Rubenstein stated that it is not a note, that it is not what is called a note on a plat. Further, she noted that Ms. Damsky is not within 75' of the stream anyway. Mr. Friedrichson stated that the original application was for a Wetland Development Permit to allow her to be closer to the wetland which application was turned down. Ms. Rubenstein stated that, whatever the notation regarding 75' means, Ms. Damsky is not within 75' of the stream anyway.

Further, Ms. Rubenstein noted and Mr. Friedrichson confirmed that the pond is not a designated wetland because it is less than ½ acre, and therefore there is no 100' buffer from that pond. Ms. Rubenstein asked Mr. Friedrichson to confirm that, other than the stream, there are no designated wetlands on the property. Mr. Friedrichson confirmed that this is accurate. Mr. Pope stated that he does not agree with that determination. Ms. Rubenstein stated that he does not have to agree. Mr. Pope stated that the stream and the pond are a contiguous wetland from the property to the north. Ms. Pope also noted that there is a run-off pipe from that stream and any pollution that goes through that run-off pipe goes into the stream and ends up in Wappingers Creek. Mr. Pope noted that Mr. Friedrichson has previously reported that wetlands are the result of an aerial survey and that there are many wetlands that are not recorded on the map. Mr. Pope stated that Mr. VonBorstall, who owns the property to the north and who wanted to buy the property from the Popes, testified that he walked all over the property and that it's wet. Mr. Pope stated that he lived there for 26 years and that he testifies that it's wet. Further, he stated that he also testified under oath last time and this time that the surveyors came in and walked the property and that they said it's wet. He stated that he's telling the ZBA that

there is wetland within 100' – forget the stream, forget the pond. He stated that Ms. Damsky is well aware that it is wetland to the east. Ms. Damsky stated that she lives on the property and that it is wet when it rains as much as it has this year. She stated that she has owned the property for a year and that she viewed it for the year previous to owning it and that when it's not wet weather, it is not wet. She stated that it is low lying, but it is not wetland and that she checked with the Town Zoning office prior to doing anything to make sure that she would not be near any wetlands. She stated that other than the stream there are no wetlands on her property.

Ms. Rubenstein asked Ms. Damsky whether she will put a paddock in that location with or without a shed. Ms. Damsky replied that this is correct. Further, Ms. Rubenstein asked if there will be a horse in the paddock. Ms. Damsky stated that there will be a horse in the paddock and that there will also be a shed there, and that whether it's where she wants it or closer to their house will depend on whether she gets the requested variance. Ms. Damsky pointed out that, if the variance is denied, the shed will actually be closer to their house.

Ms. Rubenstein asked Mr. Friedrichson to clarify whether Ms. Damsky is allowed to have a paddock and a horse. Mr. Friedrichson asked for explanation of paddock. Ms. Rubenstein stated that a paddock is a fenced in area. Mr. Friedrichson stated that the regulation on fences is: a fence can be up to 6' high right to the property line; if they are over 6' high, they must be ½ their height away from the property line; and by the road, a fence can only be 6' high. Ms. Damsky stated that the fence will be no higher than 5'.

Gordon Daley, 49 Rossway Road, was sworn in and stated that he has lived on the south side of the property since 1977. Mr. Daley stated that he's in favor of whatever she wants to do. He asked if she just wanted to put a horse on the property would she have to come to the ZBA. The Board responded no. He stated that he would move the shed back closer to the property line and farther away from the pond.

Mr. Friedrichson stated that the building inspector may have a comment about a moveable shed, that it may need to be secured to the ground. Mr. Dunn noted that the weight of the shed will secure it to the ground. Mr. Friedrichson noted that he will put in an application for a building permit that says the structure is so many feet from here and so many feet from there, that is what she's going to get her Certificate of Occupancy for and she cannot move it thereafter. Mr. Vogt stated that it's just terminology – it's a moveable/portable shed, but that it's stationary. Mr. Friedrichson stated that he does not know whether the building inspector will OK a shed that is not fastened to the ground.

Mr. Daley stated that he's in favor of the application and that it should be granted. Further, he noted that his daughter has horses just over the wall from there.

Melissa Lawlor, 17 Rossway Road, was sworn in and stated that she met Ms. Damsky after she received notification of her application and the ZBA meeting tonight. Ms. Lawlor stated that she is familiar with the property and that Ms. Damsky explained what she wants to do. Further, Ms. Lawlor stated that the property is wet. She stated that you

cannot put horses in wet or in rocky or with roots, that you have to have flat pasture land. She noted that she and her husband are in favor of the application and have no problem with it and that she likes the odor of horses. She noted that Ms. Damsky is a very nice person who wants to have an old friend nearby.

Ms. Rubenstein inquired where Ms. Lawlor lives in relation to Ms. Damsky. Ms. Lawlor stated that they are northeast of Ms. Damsky.

Mr. Dunn stated that, as a person who years ago had horses, an ideal place would be back near the wall. However, he noted that Zoning requires a 100' setback from the property line and that the ZBA is trying to work it out so that everybody can live with it. Mr. Vogt stated that the ZBA is charged to grant the least amount of a variance possible.

Kimberly Daley, 1980 Route 44, was sworn in and stated that she is in favor of the application. She stated that she is directly behind Ms. Damsky and that she has horses. She stated that when she lived at her parents' house, which is on the opposite side of the pond, they had horses there for 20 years and that there was no problem with run-off into the creek. She stated that she has a wet spot on the far east corner when it rains.

Ms. Rubenstein asked if Ms. Damsky has seen the site plan that Mr. Pope showed to the ZBA. Ms. Damsky stated that she has the same map. Ms. Rubenstein asked Ms. Damsky about the area on the other side of the pond where Mr. Pope stated that there was 2 acres clear of all 100' setbacks where she could put the horse. Ms. Damsky replied that what Mr. Daley said is true – that you cannot have a horse running around on loose and wet ground. Also, she said that she would not feel safe with her horse in that area where she could not see her. Further, she stated that she would have to build a bridge which she cannot afford at this time. Mr. Dunn asked if that is a wooded area. Ms. Damsky stated that it is all woods. Mr. Dunn noted that it would, therefore, require removal of trees. Ms. Damsky stated that it would be major stuff and that she only has enough money left to put up the fence for the paddock.

Mr. Vogt asked about the tree removal by the driveway. Ms. Damsky clarified that the trees were taken down when the house was built. She stated that she had the builder put the downed trees along the driveway because she was not happy with where he had originally put them.

PUBLIC HEARING WAS CLOSED

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DISCUSSION

APPEAL #870 DAMSKY – VARIANCE

Ms. Rubenstein stated that, after listening to everything Ms. Damsky had to say, it is again her inclination to grant the variance because she thinks that Ms. Damsky has made an effort to move the shed in order to be less in conflict with the Code. Mr. Vogt stated

that, when Ms. Damsky said that she had 20-25' distance to the fence, if she would have said that she'd like to amend the application to be 90' off the line, then he would have been in favor of the application. Further, he noted that she still has that distance toward the stone wall and it's not that difficult to grade out the area that is different in height. Mr. Vogt stated that he is not in favor of granting the variance because she still has options.

Ms. Rubenstein stated that their main objection is nothing that will ever be satisfied by anything that she does. Mr. Vogt stated that he knows the Popes are looking for pristine property. Ms. Rubenstein noted that the Popes don't want Ms. Damsky to have any horses and stated that they should not have sold her the property. Ms. Rubenstein stated that when she looks at the hardship to the community, she takes note of the fact that Ms. Damsky has become more in conformity with the Code, there does not appear to be the slightest impact on anyone, the Popes' issues are nothing that can be satisfied by Ms. Damsky short of moving away. Therefore, Ms. Rubenstein stated that she just wanted to know if she's in the minority with this opinion, then someone else on the Board should fill out the worksheet for a resolution to deny.

Mr. Vogt stated that he's against it because she has options that do not require a variance – she would have her fenced paddock and her building 100' off the line if she does a minor grading. Nobody would have a beef because she complied with the Code and would be complying with the building requirement. None of the neighbors would ever have recourse.

Mr. Gerstner stated that the only thing the Board is ruling on is the location of a shed. The fence, the horse, the manure pile, the smell will all be there whether the Board grants the variance or not. Mr. Vogt noted again that she has the option at minimal expense to keep that building within Code and would not need a variance.

Mr. Maucher noted that Ms. Damsky said that she's not coming back again if the Board does not grant the variance, which he said tells him that she will put the shed some place else. Ms. Rubenstein asked if Mr. Maucher was against the application. He stated that he's half and half. He stated that usually if there's no opposition to an application he tends to grant the request if it seems reasonable. But there seems to be some opposition along with others who testified in favor of the application. Ms. Rubenstein noted that there were more people in favor than opposed and asked the Board to look at the validity of the opposition. She stated that she understands their issue; nothing that the Board does with respect to the location of the shed is going to address their concerns. Further, she stated that the Board's job is to balance the benefit to the applicant versus the detriment to the community and that she sees no detriment to the community. She stated that she is looking at it purely as a balancing. She stated that the Board approves a lot of applications that are more convenient for people. Ennis Park is before the Board frequently because it is more convenient for him to have a bigger mobile home. She noted that the ZBA granted the hot tub, that the people never put in, because it was more convenient for them. Mr. Maucher stated that he's not 100% opposed to it, but that she could have mitigated it a little bit more.

Ms. Rubenstein stated that her reason for asking is that, if there are not 4 people to approve it, then one of the other members of the Board should do a resolution to deny and she won't do the worksheet. But if there are 4 members who are in favor of it, then she will do the worksheet.

Mr. Gerstner stated that he's in favor of the variance because of the fact that no matter which way the ZBA rules the horse will be there, the smell will be there, the manure pile will be there, and the fence will be there. The Popes will never be happy.

Mr. Vogt stated that that is why he's against it. He stated that the ZBA has ruled for people who have had no options and she has options to place it within the confines of the Code.

Ms. Rubenstein asked Mr. Dunn what his opinion is. Mr. Dunn stated that he thinks he would grant the variance. Ms. Rubenstein stated that it's a question of balance and noted that the ZBA frequently grants variances based on aesthetics. She stated that Ms. Damsky made a legitimate point that she could relocate the shed, but that means it would affect her aesthetics. Further, she stated that Ms. Damsky made a good point about trying to keep it as far away from the swampy area around the pond as possible. She also stated that she thinks Ms. Damsky is totally legitimate about not putting the horse on the other side of the property. Mr. Vogt agrees that that is not a viable choice no matter what the Popes said. Mr. Dunn concurred.

Ms. Rubenstein noted that they discussed with Ms. Damsky the option of turning the shed around but that this option was not workable because the shed must face south to protect the animal from the winter winds. Mr. Vogt stated that she still has space closer towards her house that still faces south and will be in compliance with the Code.

Ms. Rubenstein completed and read the worksheet into the record (original on file):

- Code Section 98-14(G)
- 20' rear variance
- Structure is proposed
- Detrimental to nearby properties: NO. Although there was testimony that the construction of the structure would contribute to pollution of the water in the pond, this is not accurate because it is not the structure that would contribute to pollution. If there were to be any pollution, it would be from the horse and the horse is entitled to be there regardless of whether the structure is erected or not. There was testimony that there might be pollution, but there was not any substantiation that manure from one horse is going to pollute the water because the horse is not depositing its manure in the pond. Mr. Vogt noted that Ms. Damsky will not let that horse be that close to the pond for the horse's safety. Ms. Rubenstein stated that, even though there was testimony that there might be pollution, it was not validated. Run-off from rain is not a concern. Therefore, the requested variance would not be detrimental to nearby property.

- Undesirable change in the character of the neighborhood: NO. This is a 9.45 acres property. The applicant is entitled to more than one horse. There are horses on properties in the neighborhood. The location of shed will not change the character of the neighborhood.
- Alternative feasible methods available: She could locate the shed 100' off the property line. But she prefers not to do so.
- Substantial variance: NO. The variance is 10% which is less than 50% and in the greater scheme of things does not seem that big.
- Effects on physical or environmental conditions: NONE.
- Self-created hardship: NO. She has not built it yet.
- The benefit to the applicant is greater than the detriment to the community because: Ms. Rubenstein stated that she thinks there is no detriment to the neighborhood. She noted that the Popes testified that they are opposed to it and that their main concern was about pollution of the stream and location and vicinity of the wet areas. Mr. Friedrichson identified that the areas that Mr. Pope was concerned about on the property, although they might be wet, are not designated wetlands and that the only wetlands of concern that the Board has to deal with was the stream. Even though Mr. Pope has concerns that it was going to be near the wet areas, this is not a detriment for Ms. Damsky to locate the shed back there because it is 100' from the stream which is the designated wetland. Ms. Rubenstein stated that that seemed to be the primary detriment that Mr. Pope identified and that she does not think it qualifies as a detriment. She noted that Mr. Pope's concern seems more generally associated with having the horse on the property or maybe he had the idea that there was going to be a stable with dozens of horses. She stated that she does not think there was sufficient testimony that there really was any detriment to anyone. She noted that neighbors testified in support of the application and didn't feel that an additional shed near them would be any kind of a detriment. Therefore, Ms. Rubenstein stated that when she looks at the balancing, she does not think there's much detriment other than the fact that the Pope's weren't happy. She stated that there is no way to make them happy and that their issues of concern with Ms. Damsky really had more to do with something else other than the location of the shed. In light of the fact that she did not think there was any detriment, she thinks the benefit to the applicant is greater. She stated that she thinks Ms. Damsky did what she could to try to bring the shed closer to being within the restrictions of the Code. She did move it an additional 14' further away from the property line than her previous application. Ms. Rubenstein stated that she thinks this is a pretty significant compromise on Ms. Damsky's part. She noted that the proposed location keeps it away from the stream and keeps it pretty far away from the pond, which the Pope's were most concerned about. So, this location actually keeps it farther away from the pond than if she kept to the 100' setback from the property line. She thinks the benefit to Ms. Damsky is pretty clear. She looked at alternate locations and due to her desire to have the horse close by but to avoid having her too close to the pond and still have the shed face south, it's a pretty clear benefit to allow her to have a 20' variance. On balance, Ms. Rubenstein proposes that the ZBA grant the variance.

Ms. Rubenstein: **MOTION TO GRANT THE 20' VARIANCE; SECONDED BY R. MAUCHER**

Discussion:

Mr. Vogt stated that Ms. Damsky has more than enough property and options to move the shed and be in compliance with the code and has not chosen to do so. He thinks it would be more detrimental in this circumstance.

Mr. Friedrichson pointed out that the Wetland Ordinance has three kinds of activities: Permitted, Regulated, and Prohibited. One of the permitted activities is grazing of livestock. So, unless it is the opinion that horse manure from a non-agricultural horse is significantly different from manure from an agricultural horse, which are Mr. Pope's concerns, then the activity is permitted by right. Therefore, the horse can be as close to the stream or even go through it. He stated that livestock are often seen standing in a stream.

Mr. Dunn stated that he's inclined to agree with Mr. Vogt and that he's also trying to remember the area near the stone wall. He did visit the site and asked if there was a tree line along that wall. Mr. Vogt stated that it is only on the top section, which is not in the area in question. He stated that the trees begin south of the septic line. Mr. Vogt stated that where she is looking to locate the shed in general is the open section, but she has the option with minor leveling of moving the shed. The shed would still be facing south and there would be no issue. He stated that he loves horses but the structure should be maintained within the Code requirements. He stated that when the ZBA has granted a relief on it, it has proven - with a different type of an agricultural animal which were considered pets - it proved to be that it needed to be changed.

Ms. Rubenstein stated that she does not think this is the same kind of situation and that it was an interpretation of whether the goats were pets, which is a totally different issue. Mr. Vogt stated that they were still dealing with structures for animals. Ms. Rubenstein stated that she does not agree that it is the same issue. Further, she stated that she has every respect for a person who comes in and has legitimate opposition to things. When people come in and oppose something, she takes them very seriously and tries to understand all their concerns. She stated that she really does listen. She stated that she does not think that there was a single legitimate detriment identified in their statement. Therefore, she stated that is the reason that, when she considers what a balancing is, there's absolutely no detriment to the community, there's not one legitimate negative thing other than they are really unhappy about her cutting the trees down. Ms. Rubenstein noted that they sold her property, they regret it for whatever reason and that's their issue. It does not have anything to do with the shed. Therefore, she stated that if it is more beneficial to her, it's more aesthetically pleasing, it's easier for her, it's cheaper for her to do no grading, it's a great benefit to her and zero detriment. She stated that she really did try to explore everything that he mentioned, and really tried to understand if the Board really was dealing with wetlands, if something had been overlooked. She stated that she really feels that there is no detriment to the community or to them. There really

is no detriment to this shed and it's a huge convenience for her. Ms. Rubenstein stated that it's a decision based solely on the balancing.

Mr. Vogt stated that he pays attention to the balancing but that he has difficulty with approving this variance because the applicant has options. Moving the shed 10-20' forward is not going to change her visual impact from the house. She does not want to bring her animal without the structure, but the structure should be 100' off the property line. He noted a storage shed on Gretna Hill that needed to be off the road to be in compliance. Ms. Rubenstein stated that was totally different. Mr. Vogt stated that he had options. Ms. Rubenstein stated that the Board had identified a detriment in that case and that there is no detriment in this one. Mr. Vogt referenced one on Maple Hill right next to the road because there was a fence that was put up next to it and made it more pleasing. He stated that this one has options to be in compliance. Again, Ms. Rubenstein noted that the Board had identified detriments in those cases and that is the missing link.

Mr. Gerstner stated that he does not think it is a legitimate issue because it is the structure and not the horse and Mr. Pope's issue is the horse.

VOTE TAKEN AND APPROVED 4-1-0

MINUTES

**MOTION TO APPROVE CORRECTED MINUTES 12/15/05 ZBA MEETING;
SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 5-0-0**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 10:45 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the January 26, 2006, 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
February 23, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on February 23, 2006, 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
 Lisa Rubenstein
 Rob Maucher
 Ronald Vogt
 Tim Gerstner, Alternate
 Helene Czech
 Christina Perkins

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #868 – ALOS – VARIANCE

Mr. Dunn stated that this appeal #868 was adjourned from last month's meeting.

Ms. Anita Alos and Mr. John O'Brien were present. Mr. Dunn reminded them that they were previously sworn in and are still under oath. Mr. O'Brien offered to submit a letter from one of their neighbors. Mr. Dunn informed Mr. O'Brien that ZBA cannot accept the letter because it is not notarized.

Mr. Dunn stated that he consulted the Town attorney on this appeal and that the ZBA received the attorney's letter today. Mr. Dunn noted that the attorney offered to provide case law on this subject that will enable the ZBA to render a decision at the next meeting. Mr. Dunn stated his preference to have the opportunity to review the case law and to keep the public portion of the meeting open till the next month.

Ms. Rubenstein stated that she wanted to comment on the attorney's letter. She stated that she thinks the ZBA should discuss the letter while the applicant is present. They know that the ZBA will not vote on the appeal tonight. She stated that the ZBA consulted with the attorney on the question of whether there is a legal definition that will impact the issue of whether the easement deducts from the total lot area. She stated that she would like to know how the Planning Board makes its decisions. She asked how the Planning Board proceeds when they are reviewing a subdivision. There are easements on all of the roads that are impacted by developments reviewed by the Planning Board. Further, Ms. Rubenstein stated that she thinks this is a really significant issue because this is the second appeal on this issue. She stated that she thinks the ZBA should ask the Town Board to examine this issue before the ZBA makes any decisions. She stated her concern that the ZBA might make a decision that differs from how the Planning Board decides when they review subdivision plans. She stated that she does not want the ZBA to make a decision based on the attorney's letter without making sure that it is a Town-wide policy. Mr. Dunn agreed with this perspective and stated that is why he wants to

keep the public portion of the hearing open. He stated that he does not want these applicants to be hung up for months. Ms. Rubenstein stated that she imagines that the applicants would rather not have an adverse decision even if it meant waiting a few more months.

Mr. Dunn stated that he will consult with the Planning Board and the Town Board next week so that the ZBA will be able to render a decision next month.

Mr. Vogt stated that this is the second appeal with this issue. Ms. Rubenstein stated that she does not necessarily agree with the attorney's conclusion that you subtract the easement area off of the lot. Mr. Vogt stated that he wants to see what case law says. Mr. Rubenstein stated that as a public policy matter she's not sure that she agrees with it. She stated that she thinks that maybe this is a public policy issue and not strictly a zoning issue. She stated that she does not want to hold up the applicants either, but if the ZBA follows the conclusions in the attorney's letter, you have no choice but to deny the appeal. Mr. Vogt agreed. She stated that she does not want to be in that position. Mr. Dunn stated that he wants to see the case law because the case law may preclude that. Ms. Rubenstein stated that she wants to make sure that if the ZBA is doing it this way, that the Planning Board is doing it this way, too. She stated that she does not want to end up with someone who has a new subdivision on their lot and they don't need to subtract the easement area for the road, but the ZBA is making people who have had property for years do that.

Mr. O'Brien reminded the Board that three lots adjacent to them are in the same situation as they are. Mr. O'Brien stated that these other lots have subdivided, and he showed the Board the lots on the map. He stated that this was done in 1987, which is after zoning. He stated that these lots are right next door to him.

Ms. Rubenstein asked Mr. Dunn to point these lots out to the Planning Board and suggest that the Planning Board may have reviewed them some years ago. It does not seem fair to now say that you can't do it this way.

Ms. Rubenstein stated that the ZBA generally does not want to give variances to allow people to create substandard lots. She stated that the ZBA wants to make sure that it is consistently applied.

Mr. O'Brien asked for clarification of the word egress. The Board explained that egress means exit and refers to a driveway. Mr. O'Brien stated that they still own the 4 acres and that they did not give up their land to the Town. Ms. Rubenstein stated that that is correct and that he is referring to the easement, which is the right to use the property. Mr. O'Brien stated that the deed refers to an egress for the Town, which he now understands is an easement and that he is now being denied the use of his own property. He stated that it seems like a hardship on him. Ms. Rubenstein stated that the ZBA is sensitive to his concern, which is why the Board is taking so much time to get the right answer.

Mr. Vogt: **MOTION TO ADJOURN THIS APPEAL TO THE NEXT REGULARLY SCHEDULED ZBA MEETING AND TO KEEP THE PUBLIC PORTION OF THE MEETING OPEN; SECONDED BY Ms. RUBENSTEIN; VOTE TAKEN AND APPROVED 7-0-0**

2. APPEAL #871 – STELLINI (VINTAGE BUILDERS) – VARIANCE

Mr. Dunn noted that this appeal is for a property at 465 Creek Road, grid #13-6464-02-632844, 0.988 acres in an R-2 zone. The application is for a variance from minimum acreage, minimum lot width at building line and side setback requirements for the construction of a one-family residence on a pre-existing non-conforming lot. Mr. Dunn noted that the file contains:

- Fire Advisory Board – no comment as the site improvements do not present any fire or safety issues
- Affidavit of publication in The Poughkeepsie Journal dated 2/17/06
- Planning Board – negative recommendation
- List of adjacent property owners who have been notified

Ms. Rubenstein asked for a copy of the Planning Board's minutes. Ms. Dickerson stated that she had just typed them and that they have not yet been approved. Ms. Rubenstein stated that she would like to know why the Planning Board referred this appeal with a negative recommendation.

Ms. Rubenstein has seen the property; Ms. Czech and Mr. Vogt have walked the property as have Ms. Perkins, Mr. Gerstner, and Mr. Dunn.

Michael Stellini, 1 Limback Road, Hopewell Junction, NY, was present and was sworn in. Amy Bombardieri, from Mike Gillespie's office, was present and sworn in.

Ms. Bombardieri stated that they are appealing for an area variance and that they do have Board of Health approval on the lot. She stated that it is pre-existing non-conforming and that they would like to build a single family residence on a .988 acre lot in a 2 acre zone. Mr. Vogt asked for the dimensions of the pre-existing cottage/building on the lot. Ms. Bombardieri guessed that it is 30' x 20'. Mr. Dunn clarified the location of the cottage on the lot. Ms. Czech and Mr. Stellini noted the location of a road on the property that may have gone down to the cottage.

Mr. Dunn asked what the size of the proposed structure is. Mr. Stellini stated that it is 52' x 28'. Mr. Vogt asked if it is single level or multi. Mr. Stellini stated that it's a raised ranch with a slab and a second level. Mr. Vogt stated that there is a height change, therefore. Mr. Stellini stated that it is not a problem to lower the pitch. Mr. Dunn and Mr. Vogt noted that the proposed increase is greater than the 50% that is allowed by the code.

Ms. Rubenstein asked if there is information on when the lot was created. Mr. Dunn stated that there is nothing in the file that answers that question. Mr. Vogt stated that the

cottage has been on that lot for as long as he's been in here. Mr. Stellini noted that for 911 purposes, it was identified as a seasonal dwelling.

Mr. Vogt explained that per Zoning code a non-conforming structure cannot increase by more than 50%. Therefore the largest structure allowable would be 900 square feet and the proposed structure is over 3,000 square feet. The Board discussed that some of the square footage is not living area (deck and basement). Mr. Vogt noted that they are 500+ square feet over the allowance and that there will be two floors in certain spots, which increases the living space. Mr. Dunn explained that his best calculations give about 2258 square feet, which is more than twice what is permitted.

Ms. Czech stated that she agrees with Ms. Rubenstein that the lot creation date is an important question. Mr. Vogt stated that it won't change the structure size. Ms. Czech stated that, if the structure size did change, then it is an important question. Ms. Rubenstein stated that the ZBA does not know the fundamental issue of whether it was created prior to zoning code. If it was created after the zoning code date, then there's nothing to discuss because it is not a non-conforming use, it's an illegal use. Mr. Vogt stated that the property has been there since he moved to the area which was 20 years ago. Ms. Rubenstein stated that that does not mean it was a legally created lot. She stated that she would like to see a copy of the abstract of title so that the ZBA can answer the question of when the lot was created.

Ms. Bombardieri asked what the implication is if the lot and the structure were created prior to zoning. Ms. Rubenstein stated that they can then proceed to address the size issue. The question is whether the ZBA would be likely to grant a variance on the size in addition to everything else. Mr. Vogt noted that they want to put the new building all the way in the front, which is a change from the location of the pre-existing footprint. Ms. Rubenstein stated that she thinks it makes sense to locate a new structure in the front of the lot. Mr. Vogt stated that this would be changing a policy and practice of the ZBA for as long as he's been a member. Ms. Rubenstein stated that, if it's a legally created lot and they want to propose something that is the correct size, she thinks the ZBA can write in enough exceptions in this situation because the site the cottage is on would be a horrible place to put the new house. Mr. Dunn stated that it's in the middle of the 100 year floor plain and if you can avoid that, then you avoid it. Mr. Vogt stated that he's playing the devil's advocate so that we have the information on the table. Ms. Rubenstein stated that the ZBA exists to vary the terms where it makes sense, such as in this particular case. If they have a structure that is the right size, it's not sensible to locate it back there.

Mr. Dunn asked Mr. Vogt if he actually measured the building. Mr. Vogt affirmed that, in fact, he did and that it is 20' by 30' and that he ruined his shoes in the process.

Ms. Bombardieri asked that, if it turns out that the cottage is a legally created structure, they are required to conform to the 50% increase restriction. She asked if they would be permitted to put an addition on the larger structure in the future. Mr. Vogt stated that it is a one-time 50% aggregate increase in size and that you cannot keep adding to it. Mr.

Dunn stated that the existing structure is 600 square feet, therefore they can put up a 900 square foot structure, not including the deck or the porch. Ms. Rubenstein stated that this is true unless they were successful in obtaining a variance to that, and that there's nothing to say that they cannot apply for a variance to the provision that limits the expansion. She stated that the ZBA can vary every provision of the Zoning Code if they deem it appropriate. So, it is theoretically possible to get a variance from that 50% restriction. She stated that she thinks the ZBA has granted such a variance once before. Mr. Vogt noted that the whole idea of the non-conformity is to get it back into conformity. Ms. Rubenstein stated that if it's been done before it is theoretically possible to obtain a variance from that section of the Code but that she does not know if the ZBA would vote to vary it, but it is not impossible.

Ms. Rubenstein summarized for the applicant the two issues:

1. confirm for the ZBA that the lot was legally non-conforming and predates the Zoning Code
2. probably have to amend the application to include a variance from that 50% in order to go with the proposed structure.

Ms. Rubenstein stated that the ZBA cannot even address the issue of the size of the proposed structure because the current application does not request that variance. Therefore, the applicant must amend the appeal. Mr. Dunn noted that the current application is for a side lot variance.

Further, Ms. Rubenstein stated that if the lot was created after zoning, the ZBA will not grant a variance for a substandard lot that was created after zoning. So, if you satisfy this first question, there remains a substantial amount of concern over the size of the proposed structure.

Ms. Rubenstein asked what the Planning Board's issues were. Ms. Dickerson reported that their concerns were with the 100 year flood plain, the 100' wetland buffer, and the issue of 100' between septic and water source. Ms. Rubenstein stated that that is a Health Department issue. Ms. Bombardieri stated that they have received Health Department approval.

Ms. Rubenstein stated that the applicant must amend the application to address the issue of the size increase in the structure and that they may want to think about convincing the ZBA to grant a variance for something smaller. Mr. Dunn clarified that the ZBA's mission is to stay as much in conformity with the Zoning Code as is possible. If they are replacing a 600 square foot house with a 900 square foot house, that meets Code requirements. If you are replacing it with a 1500 square foot house, there's a consideration. If you are replacing it with a 2200 square foot house, all of a sudden there's a very big concern. Mr. Dunn noted that they are allowed 900 and they are going to 2200 – that's a lot. He stated that he understands that, today, people want larger houses.

Mr. Friedrichson noted that the minimum size house in an R-2 zone is 1,000 square feet. Ms. Rubenstein stated that the applicant is somewhere between 1,000 and 2200 and

maybe they aren't that far from what's possible. She noted that if the Code says the minimum is 1,000, the ZBA will not restrict them to 900. Mr. Friedrichson stated that the 1,000 square foot minimum does not apply if they are bringing the house into compliance. Therefore, by making the house bigger they are bringing it into compliance.

Ms. Czech asked if 1000 square feet is in compliance, can they then bring it up to 1500 square feet.

Ms. Rubenstein stated that she's not against a decent looking house being built on the property. Mr. Dunn stated that you must look at it logically. Mr. Vogt stated that a 1200 square foot structure would not be unreasonable because it would fit on the lot size. It's a small lot, so you must build within the confines of what you have.

Ms. Bombardieri asked if they must reapply for a variance. Mr. Dunn stated that they only need to amend the existing application. Mr. Vogt noted that the amended application has to be posted and must be republished. Mr. Friedrichson stated that they will need an amended application for a building permit. When they change the size of the house, they must change the application for the building permit. Further, the setback will change also.

Ms. Bombardieri asked about the issue of the lot predating zoning. Ms. Rubenstein stated that if the lot does not predate zoning, then the ZBA will not grant any variances because the lot is illegal.

Ms. Czech asked, if the septic and the well are so close, how did the Board of Health approve it – how did that happen. Ms. Bombardieri stated that the proposed well is in compliance. She stated that the proposed well is within 184' to the septic across the street. She stated that, if it is a pre-existing lot, the Board of Health will work with you and grant you variances if they feel it's nothing that will endanger the water supply or make the septic not work. She stated that they had to design a septic treatment plant, per se.

Mr. Vogt asked if the septic goes into the buffer. Mr. Friedrichson responded yes. He noted that there is a wetlands and a flood plain problem. He stated that this project will go before the Planning Board for a wetlands development permit. He stated that he deals with the flood plain development permit. He stated that the applicant needs a Board of Health approval for this specific structure, which he does not think has been granted yet. Ms. Bombardieri stated that they have the septic designed for a two bedroom house and that the design has been approved. Mr. Stellini stated that the actual approval has not been granted. Ms. Bombardieri reiterated that the design has been approved. Mr. Vogt stated that when you are encroaching in a wetlands there are certain things you can and cannot do. Ms. Bombardieri stated that's for the Town. Mr. Vogt stated that that is what he is talking about. Ms. Bombardieri stated that the Department of Health has signed off on this. Mr. Vogt stated that whether the Department of Health has signed off on it or not, when you start invading a wetlands there are certain requirements that you can and

cannot do in the buffer. Mr. Friedrichson affirmed that the wetlands development permit is dealt with by the Planning Board.

PUBLIC HEARING OPEN

Ms. Christine Jensen and Mr. Charles Jensen, 459 Creek Road, Pleasant Valley, NY, were sworn in. Ms. Jensen stated that they have some concerns about the project, that they received the letter this week, and that they would like to be able to see their plans. She stated that their biggest concerns are:

1. location of the house
2. septic field and the well and how it will effect their septic field and their well
3. such a small lot that it would change the street and alter the neighborhood

Mr. Jensen noted that it seems that there are several variances being applied for and maybe more than what was in the original application. He stated that it is very difficult to comment on this application after only just receiving notice. He stated that there are a lot of issues that they have not had a chance to explore yet. He stated that they have learned from their research that variances are granted on a basis of a hardship shown by the applicant. He stated that the property was purchased fairly recently and that he does not understand, with the current zoning laws, how this could end up being a financial hardship. He stated that it appears to them that this financial hardship was being brought on by the purchaser buying a lot that is too small to be built upon and that it is a hardship that should be borne by the purchaser.

Ms. Jensen stated that their final concern is how this will impact the value of their home. She stated that they just purchased their home 1.5 years ago, and that they are looking to raise their family there. She stated that it could become a hardship for them if they cannot sell their house for at least what they paid for it. She stated that they are on the left side of the property.

Mr. Dunn stated that, if it is a pre-existing non-conforming lot, then they have the right to do certain things. He noted that they are applying for some variances and that the ZBA thinks they need additional variances. He stated that the issues that will require variances are the size of the structure, placement of the structure, which would be the approval from ZBA. Further, he noted that well and septic are a Health Department issue. And, he noted that they will have minimally an additional 30 days to research their concerns, and that the next ZBA meeting will be on 3/23/06.

Ms. Rubenstein stated that the standard for granting a variance under the law is that the ZBA is charged with balancing the benefits to the applicants versus the detriment to the community. She stated that it used to be that the applicant had to show practical difficulties or a hardship to obtain a variance. But, she noted, that over the years the law has been changed. Therefore, the ZBA has to balance and look at the benefit to the applicant and the detriment to everybody else. She stated that she wanted the Jensens to understand that it is no longer an issue of hardship but is now an issue of balance, which the ZBA takes very seriously. Further, she suggested that the Jensens confer with the applicant's engineer to review their plans and hear answers to all their questions. Also,

she informed them that they are welcome to come to the Town Hall and look through the file, that it is part of the public record.

Ms. Jensen asked, if the application is approved and if it did impact their property, what recourse would they have. Ms. Rubenstein responded that it is a hard question to answer because impact is a hard thing to measure. She stated that they would probably want to consult their own attorney to get legal advice on whether they have any recourse. She did state, however, that they certainly have the right to bring an Article 78 proceeding to try to overturn the Board's decision.

Ms. Rubenstein explained that there are impacts from everything that happens; the question is whether it is a quantifiable impact that adversely affects your property. She suggested that their property values have probably gone up just through passage of time in the year and a half since they bought it. Mr. Vogt stated that the best guidance is that they should seek legal counsel of their own to find out what their options are and what they are entitled to.

Mr. Jensen asked how to get a copy of the Zoning Code. Mr. Friedrichson offered to sell them one tonight and that it costs \$15.

Mr. Alan McCagg, 458 Creek Road, Pleasant Valley, NY, was sworn in. He stated that he owns the property across the street and that he thinks:

1. the lot is too small
2. they are infringing on the wetlands
3. he is worried about the well and septic situation

He stated that he wanted to put his name on the record as being opposed to this application.

Ms. Rubenstein asked if he would also like to talk with the applicant and review the plans. Mr. McCagg stated that he could do that but that it would not swing his judgment.

Mr. Leonard Frank, 453 Creek Road, Pleasant Valley, NY, was sworn in. He stated that he is concerned about the water. He stated that in the area they all have wells and that they have had problems with the water. He stated that the water table is changing, the mineral content is changing, and there are a lot of problems with the water in the area. He stated that there is no well or septic system on that property at the moment. Therefore, he stated that it is not that they are replacing something with something else. Rather, he stated, that they are adding something that did not exist before that will adversely affect the water table, the contents of the water in the area, and the effluent that goes into Wappingers Creek.

Ms. Rubenstein asked whether the water problem was quantity or quality. Mr. McCagg stated that the problem is both quantity and quality. She stated that it looks like there is tons of water back there. Mr. McCagg agreed but stated that in the summer it's a different story. He stated that there's a concern about keeping the estuary clean, cleaner

than it is, and a concern that adding more effluent to the system is contrary the effort to keep the water clean. He stated that he wanted to be on record.

Ms. Czech asked if his property is next door. Mr. McCagg stated that he is next door to the Jensens.

PUBLIC HEARING REMAINS OPEN

Mr. Vogt: **MOTION TO ADJOURN THIS APPLICATION TO THE March ZBA MEETING; SECONDED BY MS. PERKINS; VOTE TAKEN AND APPROVED 7-0-0.**

3. APPEAL #872 CEDAR HOLLOW MOBILE HOME PARK – 16 Juniper Avenue

Mr. Dunn noted for the file that this is the Brown variance, grid #13-6464-01-429648, R-2 zone and is an application for a variance from minimum side yard setback requirement for the location of a shed on the lot in a mobile home park.

Mr. Dunn noted that the file contains:

- affidavit of publication in The Poughkeepsie Journal dated 2/17/06
- comment form from FAB: no comment as the proposed site improvements do not present any fire or safety issues
- comment form from the Planning Board: positive recommendation

Mr. Dennis Taylor was present and identified himself as the applicant, Mrs. Brown's son-in-law. Mr. Taylor was sworn in and stated that he lives at 13 Juniper Avenue. He stated that his mother-in-law bought the mobile home a couple of years ago, she got the shed and she did not get a permit for it.

Mr. David Pretak was present and was sworn in. Mr. Pretak stated that the office was notified a while back. In this particular case, Mr. Pretak stated that Mr. Taylor's mother-in-law is quite a bit older, so Mr. Pretak asked Mr. Taylor to take care of the paperwork. Mr. Pretak stated that they did not know where the line was but made a good faith effort to complete the process. Mr. Pretak reviewed the situation and found that there's quite a bit of room to the rear, 20'. He stated that in years back they did not always show where there would be a shed or a deck, but that now they always show this information. In this case, Mr. Pretak stated that things worked out pretty well, that the shed could go back a little farther, but that there is a hill there anyway. He stated that they try these days, where possible, not to put the shed exactly adjacent to the home. He stated that the shed looks nice where it's been located. He also stated that Mrs. Brown got the required certificate of occupancy for the deck.

Mr. Dunn stated that Mr. Pretak needs to amend the application from a right side variance of 6'8" to a right side variance of 6'10". Mr. Pretak stated that this is correct.

Mr. Vogt requested again for the property boundary markers. He stated that in an effort to measure from the lot line, he did not have anything to measure to and he had to go to the neighbor's property. Mr. Pretak stated that he makes an effort to put the signs up high enough so that the kids will not knock them down.

PUBLIC HEARING OPEN

No one spoke

PUBLIC HEARING CLOSED

4. APPEAL #873 CEDAR HOLLOW MOBILE HOME PARK – 3 Black Oak Avenue

Mr. Dunn stated that this is an application for a variance from minimum setback requirements for location of the replacement mobile home, deck, and proposed shed on lot in the mobile home park. He noted that the file contains:

- affidavit of publication in The Poughkeepsie Journal dated 2/17/06
- comment form from FAB: no comment as the proposed site improvements do not present any fire or safety issues
- comment form from the Planning Board: positive recommendation

Mr. Dunn stated that there is no list of adjacent property owners as the mobile home park falls under one ownership.

Mr. David Pretak was present and was previously sworn in. He stated that in this case it was quite a challenge to figure out what they had. He stated that he was tempted to knock this one down and that this is one of the tighter sites they have encountered. He stated that usually most of the homes will be parallel to one line or the other. He discussed his thinking about how the home is proposed to be situated on the site and mentioned a room that puts the home almost essentially on the line. He stated that they will not build anything on the right side, the closest point in the back is now 6', they will bring the front over a bit to the right, which provides a clear 6' on the entire right side. He discussed his thinking about the distance from the home to the road, which in the park ranges from 10' to 12'. He stated that there is a cluster of sheds in the back, which is what they try to accomplish. He's proposing an 8' x 8' shed in the right rear corner that will be 3' off the line and 3' off the back of the home as well. He stated that there is not a very large yard and that he's anxious to tear the existing home down. He is proposing a deck. Mr. Pretak stated that, if the home on the left hand side ever got replaced, it would not end up getting closer to this lot. He also stated that there is a reasonable amount of room at the back. He stated that he did put the stakes in and did use two different color ribbons in the back left hand corner to mark the corner. He did this in order to be certain that the sheds in the back were on the correct lots. He stated that once he has approval from the ZBA, he will destroy the old home forthwith.

PUBLIC HEARING OPEN

No one spoke.

PUBLIC HEARING CLOSED

5. APPEAL #874 CEDAR HOLLOW MOBILE HOME PARK – 31 Shagbark Avenue

Mr. Dunn stated that this application for a variance from minimum setback requirements for location of a replacement mobile home, proposed deck and a shed on lot in the mobile home park. He stated that the file contains:

- affidavit of publication in The Poughkeepsie Journal dated 2/17/06
- comment form from FAB: no comment as the proposed site improvements do not present any fire or safety issues
- comment form from the Planning Board: positive recommendation
- a photograph of the home

Mr. David Pretak was present and had previously been sworn in. Mr. Pretak stated that he submitted the photo because he has already removed the home due to vandalism. He stated that ordinarily he leaves the home in place until he gets ZBA approval. He stated that he is trying to limit the amount of time that an attractive nuisance is tempting the children.

He stated that he put a trailer dumpster on the site for the community's use. He stated that he's starting to see improvement in the community.

He stated that the old home was 12'x58' and that the new proposed home will be 14'x72'. He stated that there is a really good buffer to the rear with the hill and shrubs. He stated that he opted to keep the right side the same and that it is a little bit tight there. He stated that if you put the home in the center of the lot, you effectively reduce the size of the yard all around the home. Therefore, current practice is to locate the home closer to one side and create a pretty good sized yard for the owners.

Mr. Pretak is proposing a 10'x10' shed in the rear left hand corner, which is an estimate. He stated that the stakes that are in are for the proposed home.

PUBLIC HEARING OPEN

No one spoke.

PUBLIC HEARING CLOSED



DISCUSSION

1. MINUTES

Board discussed corrections to the minutes of the Jan. 26, 2006 ZBA meeting.

Ms. Rubenstein inquired what happened to the Fischer application, the Bower Road property. She noted that it was adjourned from January 2006 and that they have not appeared tonight. Mr. Dunn stated that he has no new information about that application. Ms. Rubenstein stated that they will probably be put on the agenda for the March 2006 ZBA meeting and possibly dismissed if they fail to appear then. She asked if the Board needs to adjourn it again tonight even though it's not on the agenda tonight. She noted

that the application was adjourned but the Board did not receive any submissions from them. Mr. Dunn stated that he will check with Nancy in the Zoning Office. Mr. Vogt wondered why the application wasn't put on the agenda for tonight. Ms. Rubenstein suggested that the fact that they didn't make a submission, probably wouldn't trigger them getting onto the agenda.

Mr. Dunn stated that, until the ZBA hears differently, he makes a **MOTION TO ADJOURN THE FISCHER APPEAL #869 UNTIL THE MARCH 23, 2006 MEETING; SECONDED BY L. RUBENSTEIN; VOTE TAKEN AND APPROVED 7-0-0.**

Ms. Rubenstein: **MOTION TO APPROVE THE CORRECTED MINUTES OF THE 1/26/06 ZBA MEETING; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 7-0-0.**

2. APPEAL #872 – CHMHP – 16 Juniper Avenue

Ms. Perkins read the worksheet into the record.

- Type of variance: 98-25 H(2) to install an 8'x10' shed
- Right side variance of 6'10"
- Structure is existing
- Variance will not be detrimental to nearby properties
- Variance will not cause an undesirable change to the neighborhood
- Variance is not substantial
- Variance is the result of a self-created hardship
- Benefit to the applicant is greater than the detriment to the neighborhood
- Balance in favor of granting the variance

Ms. Perkins: **MOTION TO GRANT THE VARIANCE; SECONDED BY L. RUBENSTEIN**

Mr. Vogt questioned who on the application is the actual applicant, that again the office manager's name is on the last page. Ms. Rubenstein stated that the correct applicant is Mr. Pretak. Further, she stated that she thinks it is a non-issue because Mr. Pretak so frequently appears before the ZBA in person. Mr. Vogt stated that he was asking in order to be clear for the future.

Ms. Rubenstein: **MOTION TO AMEND THE MOTION TO APPROVE: MOTION TO GRANT AN 8'X10" SHED WITH A 6'10" VARIANCE ON THE RIGHT SIDE;**

VOTE TAKEN AND APPROVED 7-0-0.

3. APPEAL #873 CHMHP – 3 Black Oak Avenue

Ms. Czech read the worksheet into the record:

- Type of variance: 98-25 H(1) & (2)
- Variances for the Home: 20' front; 1' rear; 9' right

- Variances for the Deck: 3'11" left
- Variances for the Shed: 12' right; 12' rear
- Structure is proposed
- No detriment to nearby properties
- No undesirable change to the neighborhood
- Cannot use it as is
- Variance is not substantial
- No adverse impacts to physical or environmental conditions in the locality
- Variance is the result of a self-created hardship
- Benefit to the applicant is greater than the detriment to the community
- Balance in favor of granting the variance

Ms. Czech: **MOTION TO GRANT THE REQUESTED VARIANCES AS FOLLOWS:**

- **Variances for the Home: 20' front; 1' rear; 9' right**
- **Variances for the Deck: 3'11" left**
- **Variances for the Shed: 12' right; 12' rear**

R. VOGT SECONDED

Mr. Dunn asked if the Board had any discussion. There was none.

VOTE TAKEN AND APPROVED 7-0-0

4. APPEAL #874 CHMHP – 31 Shagbark Avenue

Ms. Perkins read the worksheet into the record:

- Type of variance: 98-25 H(1) & (2)
- Variances for the Home: 17' front; 3' rear; 6'6" right
- Variances for the Deck: 4' front; 8" left
- Variances for the Shed: 12' left; 10' rear
- Structure is proposed
- Variance will not be detrimental to nearby properties
- No undesirable change to the character of the neighborhood
- No feasible alternatives to use the property as is
- Variance is substantial
- Variance is not a self-created hardship
- Benefit to the applicant is greater than the detriment to the community
- Balance in favor of granting the variances

Ms. Perkins: **MOTION TO GRANT THE REQUESTED VARIANCES AS FOLLOWS:**

- **Variances for the Home: 17' front; 3' rear; 6'6" right**
- **Variances for the Deck: 4' front; 8" left**
- **Variances for the Shed: 12' left; 10' rear**

SECONDED BY R. MAUCHER

Mr. Dunn asked for discussion. There was none.

VOTE TAKEN AND APPROVED 7-0-0

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:40 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the February 23, 2006, 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
March 23, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on March 23, 2006, 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
 Rob Maucher
 Ronald Vogt
 Tim Gerstner
 Christina Perkins

Members absent: Lisa Rubenstein
 Helene Czech

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #875 – WALKER – SPECIAL USE PERMIT

Mr. Dunn recorded for the record that this appeal is submitted by Ms. Heidi Walker, 193 Ward Road, Salt Point, NY, for a special use permit per 98-11 for the operation of a riding academy. He noted that the file contains:

- List of adjacent property owners
- Affidavit of publication in The Poughkeepsie Journal dated 3/23/06
- Planning Board referral: positive recommendation
- Letter from Roger Lee, Town Building inspector (original on file): “Heidi Walker’s barn is built in compliance with all requirements of New York State Uniform Fire Prevention and Building Code. On 3/14/06 a variance was granted by the NYS Division of Code Enforcement and Administration allowing the owner to provide sprinkler coverage in only certain portions of the building, not the entire building.”
- Comment form dated 3/1/06 from Pleasant Valley Fire Advisory Board (original on file): “as a condition of approval of this project the Fire Advisory Board recommends that a water sprinkler system be installed servicing the entire building.”

Heidi Walker was sworn in. She stated that she has 90 acres, 5 acres for a Special Use Permit for a riding academy. As per the Dutchess Land Conservancy, she reported that they placed an easement on the land, so that no more building is allowed. She stated that they have a 10-stall barn with the riding academy. She stated that she owns 8 horses, which are for her private use. She stated that she has 2 stalls available for boarders or lesson horses. She stated that when she has clinicians come from Europe, she receives no compensation. She stated that the clinicians are paid directly by the clients. So, she stated that the only Special Use Permit she is seeking is for the additional stalls that she has should she seek an occasional boarder. If she does give lessons, she stated that she has a trainer on staff. Again, she noted that the trainer receives compensation directly

from the students and that she, Ms. Walker, receives no direct compensation. As per the building code or the permit code, she stated that it says something about compensation.

Ms. Walker stated that NYS has granted her a variance to have sprinklers only at the ingress and the egress of the barn. She stated that the apartments above are fully sprinklered. She stated that she has the plans for these sprinklers that have not yet been submitted because she just received the variance last week. She stated that she does not have a letter from the State, but that Roger Lee and the Fire Marshall were there at the meeting as well as her husband and that it was a unanimous vote to approve their variance on the sprinklers. She stated that the sprinkler system has been installed and that Roger Lee will inspect it when he returns from vacation. She stated that the same person installed the sprinklers throughout the apartments and in the barn and that Mr. Lee has inspected and approved the sprinklers in the apartments.

Ms. Walker offered to provide the ZBA with the plans for the sprinkler system. Mr. Vogt and Mr. Dunn agreed that it is not within the purview of the ZBA to review the system and therefore the Board does not need the plans.

PUBLIC HEARING OPEN

Ms. Pamela Lovinger stated that she and her husband Jeffrey own the property immediately north of the Walker property and on the west side of Clinton Avenue. She stated that her address is 181 Clinton Avenue, Salt Point, NY. Ms. Lovinger was sworn in. She asked, if the Walkers were to sell the property in the future and because the property has been granted a commercial use, could a future owner do something different on the site like an automobile shop. Mr. Dunn responded no and explained that the Walkers are applying for a Special Use Permit. She stated that, as it can only be that use, then she would like to state for the record that she and her husband have no objections to this appeal.

Mr. Donald Errico, 200 Ward Road, was sworn in. Mr. Errico stated that he was going to ask the same question that Ms. Lovinger just asked – whether someone else could buy the property and change it into a target range or a lumber yard. He stated that the ZBA already answered that. His other question is whether there will be any more construction on the property and whether they are contemplating a parking lot or is all the construction completed. He also wondered if there would be more traffic and more horses. He stated that he knows that certain people want the road blacktopped and certain people want to leave it just the way it is because of the horses. He stated that he was wondering if the Town could come to some compromise where they could black top the two edges of the road, because this January 2006 when they were building on Clinton Avenue it was very muddy with the thaw. He stated that if the Town could get together with a few of the owners and perhaps black top a portion of it. Mr. Vogt advised Mr. Errico that he would have to address that with the Town Highway Superintendent. Mr. Dunn advised Mr. Errico that this ZBA meeting and the Board is strictly to decide on a Special Use Permit.

PUBLIC HEARING CLOSED

2. APPEAL #868 ALOS VARIANCE

Mr. Dunn recorded for the record that this is the continuation of the Public Hearing on this appeal from last month and asked the applicant if they have anything that they want to add.

Mr. Dunn stated that the applicants' survey is not stamped. The applicant stated that the surveyor is present at the meeting tonight. Donald Salmon, P.O. Box 393, Salt Point, NY 12578, was sworn in and stated that he is a licensed land surveyor. Mr. Salmon stated that he surveyed the property for Ms. Alos and noted that the deed went to the center line of the road, which is 4 acres. He noted that all the deeds on that portion of Hurley Road go to the center line of the road from which their acreage is calculated. He stated that the applicant does have 4 acres to the center line of the road and realized that they need to make a road line for the applicant. He stated that he took 25 feet off, calculated the new acreage, which leaves the existing house with 1.48 acres and still provides 2 acres for the proposed lot. He stated that this is what the Planning Board advised them to do. Mr. Salmon pointed out these details on the map. Mr. Salmon noted that a subdivision on the property just north of this property had been approved in 1987 where they encountered the same situation and were approved to create 3 lots – one lot with the existing house, and two new lots. He stated that they showed the calculations, they took the 25 foot road strip off the front, and the end result was that the lots did not actually consist of 2 acres because they did not do a road calculation of the new lots with the 25 foot strip taken off. He stated that the Town of Pleasant Valley approved that. He stated that the Town approved this subdivision just one lot north of this applicant but they did not recalculate the lot acreages to that new road line. He stated that they can create a two acre lot with the road line 25 feet from the center and that the existing house would be on one 1.48 acres. He stated that they are asking if they can create a lot conforming to the Town regulations even though the other subdivision didn't make them do that and leave the existing house on 1.48 acres.

Mr. Dunn stated that the ZBA has tried not to create illegal non-conforming lots. Mr. Salmon stated that they already have. Mr. Dunn stated that all the years he's been on the ZBA, the Board has tried not to. Mr. Dunn noted that, yes, NY State law does allow for it, there is case law for that. He stated that a consideration he was considering, and he spoke with the chairman of the Planning Board, is that the applicant has a deed for 4 acres, they are paying taxes on 4 acres, etc., and the ZBA must take into consideration other properties on this road that had the same problem. Mr. Dunn stated that he is leaning towards, but that he does not know what the other ZBA Board members are thinking, but that he is leaning towards – thinking that they have not dedicated this part to the Town, correct? Mr. Salmon stated that it exists and the Town maintains it, so that it is dedicated by right of prescription if nothing else. Mr. Salmon stated that it's been maintained but not dedicated by deed description, which could be done upon this application. He also noted that the applicants can also offer the Board a two acre lot that will conform with the road line. Mr. Vogt reiterated that the Board is not allowed to create a non-conforming lot. Mr. Salmon noted that on the 3-lot subdivision that was approved in 1987 the surveyor created a road line but did not subtract it from the acreage – he put two acres, two acres, two acres, but they are not two acres. He stated that they

did not dedicate that strip to the Town on the map. He stated that it looks to him that they pulled the wool over the Town's eyes. He stated that this is a hardship because the applicants would like to build a house behind them and they can create a conforming lot. Mr. Vogt stated that the problem is that they will be creating a substandard lot. Mr. Salmon stated that they are before the ZBA because they have one substandard lot which is existing and they can make a new conforming lot. Mr. Vogt stated that he understands what Mr. Salmon is saying but that in order to make the 2-acre conforming lot, they also must create a substandard lot with an existing property with an existing home on a property now. Mr. Salmon stated that they are at the ZBA's mercy and are asking if they can do this and what is the best procedure in order to do this. He stated that the land is beautiful and that they will not be changing the character of the neighborhood and that they are trying to play by the rules.

Mr. Dunn stated that if they were to consider this to be a 4 acre lot subdivided into two, then the line would fall at the base of that cliff. Mr. Salmon stated that it changes slightly because they put the lot lines back out to the center of the road. Mr. Salmon stated that it obviously does not comply with zoning and they are trying to find out what the Board's concerns are with this.

Board asked if houses were built on each of the 3 lots that were created in 1987. Mr. Salmon stated that, yes, 3 houses exist – one house was existing, and they created 2 substandard lots. Mr. Salmon provided a map of these properties that the Board reviewed. Mr. Salmon noted that none of these lots is 2 acres, including the lot that the existing house is on. He stated that they showed the line to the center of the road, which is what these acreages were based on and that they offered it for dedication but did not revise the areas or the lot line to comprise these acreages to show what they really were. He stated that these 3 lots are not two acres. He stated that they are trying to see if they are setting a precedent, because the 3 lots are definitely non-conforming because they are not 2 acres whether by a .10 of an acre or by .50 of an acre. Mr. Dunn stated that it would matter in that a smaller the variance would be required. Mr. Salmon wonders if they ever filed new deeds on the 3 non-conforming lots. Mr. Vogt stated that he would like to find that out and wants to see the 1987 file to see what happened because it is a precarious situation. Mr. Salmon argued that they can provide the ZBA with one 2 acre lot, and one non-conforming lot – the total being less egregious than what was approved in 1987.

Mr. Salmon stated that he's been doing this for 30 years and that his company has been in business for 32 years, that this stuff happens every once in a while. He stated that these applicants are good people who are trying to do the right thing.

Mr. Dunn stated that there are a couple of ways to attack this and that he would like to get it done tonight. He asked if there was anyone else who wanted to speak to this appeal. No one spoke.

PUBLIC HEARING CLOSED

3. APPEAL #869 – FISCHER VARIANCE

Mr. Dunn noted that this applicant has asked for a postponement.

4. APPEAL #871 – STELLINI (VINTAGE BUILDERS) VARIANCE

Mr. Dunn noted that this is a continuation of the Public Hearing on this appeal.

Amy Bombardieri was present and was previously sworn in. Mr. Stellini was present and was also previously sworn in. Mr. Michael Gillespie, engineer, 1559 Route 82, was present and was sworn in.

Board asked what the square footage of the new house is. Ms. Bombardieri responded that the revised footage of the first floor is 1458. Mr. Vogt asked what the square footage is of the second floor. Ms. Bombardieri stated that the basement is 687 sq. feet and that the garage is 713 sq. feet. Mr. Dunn asked if they are putting up a one-story house. Mr. Stellini replied that it's a design where you go in the front door and there are half steps going up and half steps going down. Mr. Dunn noted that it's a raised ranch. Mr. Vogt stated that they have living area on both levels and, therefore, they have over 2,000 sq. feet of living area. Mr. Dunn stated that he understands that they have reduced from the original plan the height and the width of the house. Ms. Bombardieri responded yes and that, therefore, they are not asking for a side lot variance.

Mr. Dunn asked the Board members if they have any questions. Mr. Vogt noted that they have reduced the home by 2' in length and only reduced a total of 150 sq. feet from the original plans. Ms. Bombardieri responded that she believes this to be accurate. Mr. Vogt stated that they have presented to the ZBA a non-conforming lot, that zoning only permits an increase in square footage up to 900 sq. ft. He stated that if they stretch it they are dealing with a 1000 – 1200 sq. foot home, which would double the size of the original structure. He stated that they must understand that they are dealing with a non-conforming property. They had a property that was undersized with a 20' x 30' home on there, which is 600 sq. foot. He stated that a non-conforming property can only increase by 50%. Mr. Gillespie stated that they knew that this was an issue and they have additional information to submit to the ZBA. He noted that they have modified the side yard set back and therefore they do not need the side yard variance.

Mr. Gillespie referenced a section of the Code regarding alterations (98-30), it is in their opinion that what is being proposed is not an alteration. Rather he stated that there is an existing 600 sq. ft. building/structure – a cottage. He stated that per the Code a non-conforming building may not be reconstructed or structurally altered. He stated that they are not proposing to do either – they are not reconstructing or structurally altering the existing building. Mr. Vogt stated that he knows exactly what is being proposed. Mr. Gillespie stated that they are proposing to demolish and remove the existing structure and that it is an interpretation issue. He stated that they hope to get some additional feedback from the ZBA and from Mr. Friedrichson on procedures to make sure that they are asking the right questions. He stated that they think that because the Code specifically states a non-conforming building may be reconstructed or structurally altered, it does not apply to this project. He stated that they went to the Dutchess County Assessor's office and

pulled up an aerial photograph of this parcel which they submitted to the Board. He stated that they wanted the Board to see the size of the parcels that exist in the local area. He pointed out that there are a number of lots in that area that are under the two acre code requirement, which are most likely previously non-conforming and created prior to zoning. He noted that the ZBA reviews appeals in consideration of surrounding lots and neighborhood. He stated that they were hoping to show that this appeal, in fact, is not out of line with the nearby lots. Further, they reviewed the Dutchess County property records and discovered that there is a permit that was taken out on the cottage on this property in 1946, which he offered for the record. He suggested that this permit provides documentation for when this lot was created, showing that it was pre-existing non-conforming prior to zoning. He noted this one small lot existed, the zoning code happened, and this is a non-conforming lot. He stated that he hopes this provides additional information for the ZBA to show that this lot was in existence in 1946. He stated that they have reduced their variances specific to things they have no control over.

Mr. Dunn asked if there is anyone from the public who would like to speak to this application.

Mr. Charles Jensen, 459 Creek Road, came forward and was previously sworn in. Mr. Jensen stated that he lives in the lot adjacent to this construction. He stated that he offered his concerns at last month's ZBA meeting and that he wished to reiterate them tonight. He noted that the building codes were implemented for a reason and that he assumes that they reflect the Town's desire to ensure that the lots comply to a larger fact that there not be as much construction. He stated that they heard tonight about a pre-existing lot which had a construction on it that they want to remove and build something completely different and completely new. He stated that the existing structure is listed as a bungalow or a cottage on some of the information they have found and that now they are looking to build a two bedroom house. He stated that the implications to the neighborhood, to the creek, to the wetlands that are on the property, and specifically to his property and the neighboring property on the other side, there could be detriments. He stated that he does not know what the effects will be to run off and that he is concerned about the septic system that they have proposed specifically with upkeep and the maintenance that needs to be done on it. He stated that he has looked into the information that they have given him on the company, and that it seems that they offer two products – one for septic systems that are already failing, and one that needs to be maintained every six months. He stated that it is not clear to him that this construction will be for the person who now owns the property or whether it is to be built in order to be sold. He stated that he does not know whether that matters to the ZBA, but that it matters to him because a requirement to maintain the septic system every six months is a huge commitment and that he does not know whether the people who may purchase the property would be that committed to the upkeep of the septic system. He stated that they would have their variance and their septic system and as far as he knows his water supply and the creek will be contaminated.

Mr. Jensen stated that he also listened to the information the ZBA stated last month and the questions that were asked about the increase to the size. He noted that it is clear that

the living space even on the revised plans is much larger than a 50% increase. He stated that even if they were increasing it to code to the 1000 foot minimum, it is still well beyond that – at least double what would make it a compliant structure.

Mr. Jensen stated that he heard the ZBA state last month that any construction needs to be on the footprint of the previous construction. He noted that this new construction is in a much different location and that it seems very strange that these plans are even part of their proposed variance.

Mr. Jensen stated that the fact remains that the lot is too narrow and the lot size is less than half the zoning requirements. He stated that he commented last time that there can be no claim of financial hardship for this particular owner because the property was purchased after the Code was in effect, that the Code is very clear, and was clear to him when he purchased his property. He stated that it was clear to him that the local area is 2 acre zoning, which was part of the reason they were happy with the location that they chose. He stated that he knew the lot next to them could not be built on because it is too small, which was very desirable to them.

Mr. Jensen stated that he shares the concerns that were stated last month by the neighbor on the other side of them. He stated that the other neighbor commented about the water quality and the reduction in the wells and how they have been drying up and the changes that have to have been made. He stated that he noticed that the well on the proposed lot is quite close to his location and that he does not know how this will affect the water quality of his well or if there will be any suppression in the area from the pumping of the two wells. He stated that this is a concern of his and that it is a change to the character of the neighborhood. He stated that these codes are in place for a reason and if the Board grants variances to every plan that is not in compliance, then the codes don't need to exist. He stated that to him this proposal is antithetical to the intent of the codes.

Ms. Christine Jensen was present and was previously sworn in. Ms. Jensen agrees with everything that her husband just stated and added that they have done a lot of research to support their comments.

Mr. Jensen stated that there can be many adverse effects environmentally to the area, changes in the run off. He stated that he mentioned before that the waste distribution field is in a wetland, in a flood plain, and that it makes him very nervous that it will contaminate their property and the surrounding properties and the creek as well which will affect the entire area. He stated that they are also very concerned about the resale value. He stated that the value of this property has gone up, but that if he were to sell after this property has been constructed, he thinks he would see a decline in the value of his property, which represents a change in his resale value.

Mr. Vogt asked where Mr. Jensen's well is in relation to proposed new structure. Ms. Jensen pointed out on the map the location of their house and their well. She stated that they are concerned about the fact that they have their curtain drains, the run off from those, and the back infield is wet – completely wet – and is within the 100 year flood

plain. She stated that the creek has risen twice this year and has been up in their back yard and has been past a significant section. She stated that is why they are concerned about their proposed septic system. She stated that she checked out the system they are proposing which from her understanding is one that is currently failing to rejuvenate. She stated that she does not understand why they would be putting this into a new home, that it requires a 6 month maintenance system. She stated that they are concerned that when they sell the property whether the next owner will be diligent with the upkeep. She stated that the potential for raw sewage coming into their backyard exists.

Mr. Vogt asked how far their well is from the edge of their property. Ms. Jensen stated that they reviewed their map last night, that she's not sure but that it does not appear to her that it is 100', which she believes is the requirements. She also commented that she reviewed where the applicants are proposing to place their well and their septic and that she's not clear on whether their well needs to be 100' from the start of the septic or from the field, because it is clearly not 100' from where they are proposing their well to the start of the septic system. Mr. Dunn noted that issue is not within the purview of the ZBA.

Mr. Ken Evans, 469 Creek Road, was sworn in. Mr. Evans stated that he is directly north of the property in question. He stated that his concern is that the people who previously owned this property completely changed the property and built a retaining wall that shows on the map. He stated that since that wall was built, it has directed the flow of water coming from the hill and off the road drastically and now he has flooding in his driveway as a result. Further, he stated that whatever the proposed house would do is also a big concern of his. He stated that his well is approximately 25' away from the retaining wall. He stated that he has had 2 wells drilled, that he's down over 400' now, and that he does not know what a new well will do to the water table in the area. He stated that he knows a neighbor in the area who had a well dug that was 600' and he doesn't know what that will do to the water table.

Another concern Mr. Evans has, he stated that there are survey stakes up there and he knows that his property is 100' wide. He stated that when he goes from the property that's just north of his and measures from that stake that has been surveyed a couple of times recently and measures 100', the survey stake that is on the road is 25' short of where it is supposed to be. Therefore, he stated that he has a concern of whether the survey on the north end of that property is correct, and he stated that he does not know if that would make a difference on the variances on the side. Mr. Dunn stated that if the survey is stamped "Certified," then the ZBA must accept it as being correct. Mr. Dunn stated that the surveyor has put his professional mark on it and could lose his license if he knowingly did something incorrect. Therefore, Mr. Dunn stated that he understands Mr. Evans' concern, but the ZBA must take a certified survey as gospel. Mr. Evans asked if there is a course of action to take to see if it is correct. Mr. Dunn stated that Mr. Evans can hire his own surveyor.

Mr. Evans also commented on the existing structure. He stated that he has lived in his house for 28 years and that he has seen that property flood a number of times coming up

past the existing house. He stated that he has seen the water come up past the hay bale berm that is going to be a barrier for the septic system. He stated that he does not know how a hay bale will protect the creek from contamination when the creek rises that high. He stated that he would think this is a major concern for everyone in Pleasant Valley. He stated that you can see a water line on the existing structure, which is sitting on 1.5' high blocks. He stated that he thinks this is a concern that should be taken into consideration along with the water coming up into the area where the septic is planned.

Mr. Christopher Arnone, 49 Valley Road, was sworn in. He stated that he has just one concern that pertains to everybody on Wappingers Creek. He stated that he lives on the Wappingers Creek and has approximately 250' of creek frontage. He stated that he is a game bird breeder with a DEC Class A and the water has come very high this year and last year. He stated that he has a lot of friends who have properties on the creek and who have seen the water come up really high into the leech fields and that he is concerned. He stated that he hopes the engineers who are doing the planning with the leech fields and the septic tank – that it's legit and is up to code. He stated that he knows the ZBA is only a variance committee, but the Town is on it because there would be nothing but trouble in the future. He stated that he knows exactly what these folks' plans are, but anything on the Wappingers Creek he is concerned about especially when it comes to spillage or pollutants.

Mr. Dunn asked the applicant to give some background on the septic system. Mr. Gillespie responded that there's no denying that this is a small area and that there are a number of steps that had to be taken. He stated that one of the steps is that they must go before the Planning Board for a flood plain development permit and a wetlands permit. He stated that many of the concerns and questions raised tonight specific to the flood plain must be addressed at the Planning Board if they are lucky to get that far. He stated that the point is that the first step that was made is the Health Department. He stated that without the Health Department approval, what's the sense. He stated that it's the old chicken or the egg. He stated that the plan that is before the ZBA does have a Dutchess County Health Department approval. He stated that due to the constraints of the lot the house is two-bedroom maximum. He stated that typically the Health Department requires a 3-4 bedroom maximum, but they gave them 2. He stated that in effect the flow value for the septic system is based upon bedroom count. He stated, therefore, that there's a restriction on that.

In addition, Mr. Gillespie noted that the Health Department does allow you to install a septic system within flood plains but there are certain requirements for trenches that must be a certain distance above that flood plain elevation which they have done. He stated that they have kept the bottom of those trenches above that flood plain elevation. He stated that they have also met the requirements for the separation distances between well and septic and also from the adjoining properties. He reiterated that the map has been approved by that department. He stated that the hay bales are temporary measures that are put in during construction in an effort to capture run off and sediments especially in a sensitive area such as this with the creek behind.

Mr. Gillespie stated that they are implementing another safeguard system called a White Knight system, which was reviewed and approved and is an integral part of this plan. He stated that, if you think about a conventional septic system – raw sewage goes from the house to the septic tank, the solids drop out, grey water flows into the fields and they disperse into the ground. He stated that the White Knight system has another level of treatment that reduces the level of organic matter that gets discharged to the septic system down below. He stated that the White Knight system is located up by the house out of the flood plain, and that there is preventative maintenance required on it every six months. He stated that conventional septic systems are supposed to be cleaned on average every 2-3 years, depending on how many people live in the home. He stated that the Health Department specifically stated that they wanted that maintenance to occur every six months on this unit, and that's what the unit recommends. He stated that this is an additional requirement of the property owner.

Mr. Vogt asked if this tank has to be drained every six months. Mr. Gillespie responded that they are not saying that it must be drained that frequently. Mr. Vogt asked what the maintenance entails. Mr. Gillespie responded that the way the unit works is that there's a mechanical system with pumps and maintenance is required to ensure that it works – electrical, etc. – which he stated is different from a typical septic system that you can let go 5-6 years because it is gravity fed. He stated that this is not uncommon in standard pump systems. He stated that typically you try to design septic systems where the houses are high and there is a gradient that descends to the tank and the fields. He stated that this is what we all want because it's hands free and there is no worry about pumps. Unfortunately, he stated that the properties are becoming more constrained and pump stations are becoming more common. He described the pump station as going from the house to a septic tank through a pump chamber, which is the regular size of a septic tank. He stated that once the water gets to a certain level in that tank it is not pumped to another area on the site that is at a higher elevation. He stated that there is also within the home itself a preventative failure mechanism with audio and visual alarms that alerts to when things don't work or the electric goes out. He stated that he does not want to make it seem that this is a wild erratic design. He stated that they have used these before and it is obviously approvable by the Health Department.

Mr. Dunn asked what there is to allay the fears of the folks who have spoken. He asked what measures are in place to force someone who buys the house 5 years from now to pay attention to the required maintenance on the system. He asked if the alarm system goes off is that too late? Mr. Gillespie stated that the fail safe on something like an overflow or something is such that in the worse case there would not be the treatment that the system is providing and it would simply be acting like a septic tank. He stated that because it is a unique system and before the house can be built there will be a representative from the Health Department visiting the site to meet with the builder to review the plans for the White Knight system. On other installations, the Health Department has asked that prior to the issuance of a C.O. an agreement be provided to the Health Department stating that they are in contract with a maintenance company in order to provide maintenance on the system. Ms. Bombardieri stated that she does not know if such an agreement or stipulation exists on this unit but she stated that when you buy the

system itself they offer a two year maintenance agreement. Mr. Vogt asked what happens after the two years are passed and what are the safeguards thereafter. He asked if there would be a bond put up and if something failed that there would be money in a fund. He asked what safeguards would the neighbors have that if the person does not maintain the system such that the effluent does not end up in their backyard.

Mr. Gillespie stated that, to be clear, this system is a treatment system and does not reduce the amount of flow that goes to the fields. He stated that it cleanses the effluent but does not reduce it. He stated that when you implement one of these systems, he thinks that White Knight gives a two year service contract as part of the deal, but this does not address the continued maintenance. Usually, he stated that prior to the issuance of a C.O. a maintenance contract is required. He stated that this can be implemented on this unit, and he thought that would be more of an issue with the Planning Board. Mr. Dunn stated that it is, but that the ZBA also wants the information and the neighbors have concerns.

Mr. Gillespie stated that they are looking for variances specific to 2 things that they think they cannot control because of the pre-existing situation. For informational purposes, he stated that typically they do require a service contract. He stated that in terms of the bond, what is it supposed to be – 5 years, 10 years, 20 years, 50 years? He stated that it gets to a point where it becomes impractical and who knows when that system is working or not working. He stated that he thinks there's an inspection that must take place as part of the service contract. He stated that the system does not hold back flow but that the effluent that runs out of that has a higher level of biological activity than it would if it were not treated. Mr. Vogt stated that because of the proximity and the 100 year flood plain that's an issue and that's the question that the neighbors have. Because of the site and the restraints and the size of the lot, there are issues.

Mr. Gillespie stated that at some point he's going to have to repeat all this to the Planning Board. He stated that the permits they are looking for specific to the Planning Board are related to the flood plain encroachment and the wetlands issue. He stated that they are open to whatever the ZBA requires with regard to ensuring that maintenance is done on the system in a timely fashion. Mr. Dunn stated that he does not know whether the ZBA can put that kind of a condition. Mr. Vogt stated that it is not the ZBA's purview but it is the concern.

The Board asked if this treatment system was required by the Health Department or was it suggested and offered by the applicant. Mr. Gillespie stated that the Health Department did not accept the original plan and they enumerated their concerns with the site. He stated that they had a meeting with them to find out what the Department thought would work on the site to provide a preventative measure. He stated that a couple of things came out of that. He stated that typically they have a primary and an expansion area. He stated that instead of just filling the primary sewage disposal area, they are actually filling both those areas as an additional preventative measure that they offered. He stated that he does not remember if the White Knight system was a mandate from the Department or whether they offered it.

Mr. Dunn asked for clarification about additional fill in the back. Mr. Gillespie stated that for the septic system in the rear they are putting in a fill section into the septic system, which is that they will back fill around the perimeter. He stated that this is standard with the Health Department and that they had to design for the primary system and for 100% reserve area in case of failure. He stated that typically you only put in a primary, because that's all you need. At an additional level of care, they also are putting in the fill for the expansion area to create a larger basal area for effluent to work through. He stated that this is what it took to obtain the Health Department approval.

PUBLIC HEARING CLOSED

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DISCUSSION

1. APPEAL #875 – WALKER SPECIAL USE PERMIT

Mr. Dunn asked the Board for its thoughts. Mr. Vogt noted that in the actual application, they had 57 acres and stated that they have approximately 90 acres when combined for the properties. He stated that if you visited the property and noticed the way everything was built structurally down to the brass fittings on the inside, he stated that he wished his house was as nice. He stated that they have enough acreage, the structure is already built, there will be no new construction, there will be no other changes from what currently exists. He noted that Ms. Walker stated that she has 8 horses that she owns and 2 stalls for boarding. He stated that even if she had 5 personal horses and 5 possible commercial outlets, everything is indoor, it sits back off the road and it's not a 25 acre parcel that needs to be stretched into 50. He stated that where the paddocks are located, everything is behind and out of sight from Ward Road. He stated that he does not have a problem with what's there and what's proposed. Everything has been done top shelf, he noted, and nothing has been shortchanged. He stated that notwithstanding this high quality, even if it were to change hands, Special Use Permit for the property is for what it is. He stated that if you look at what's there and look at it as a whole, he only sees a positive for the neighborhood not a negative and that this is the job of the ZBA to see that the neighborhood is protected.

Ms. Perkins read the worksheet into the record – original is on file.

- Location of property – 193 Ward Road
- Zone – R-2
- Type of variance – Special Use Permit Section 98-11
- Requested variance will not be detrimental to nearby properties
- No undesirable change will occur in the neighborhood
- Requested variance is not substantial

Mr. Perkins read into the record the Special Use Permit Resolution – original on file.

RESOLUTION: Whereas the applicant, Heidi Walker, has submitted proof in support of her application for a Special Use Permit which under the Code of the Town of Pleasant Valley requires the issuance of a special use permit, and

Whereas such proof has been duly considered by the Board at a public meeting, now, therefore, be it

Resolved that the Board finds that the use for which such permit is sought, to wit 98-11, 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 reasonably necessary for the public health, is appropriately located with respect to transportation, facilities, water supply, fire and police protection, waste disposal and similar facilities, that neighborhood character and surrounding property values are reasonably safeguarded, will not cause undue traffic congestion or create a traffic hazard, complies with all of the conditions or 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.

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.

Ms. Perkins: MOTION TO GRANT THE SPECIAL USE PERMIT

SECONDED BY MR. VOGT

VOTE TAKEN AND APPROVED 5-0-0

2. APPEAL #868 ALOS – VARIANCE

Mr. Dunn asked for discussion. Mr. Gerstner stated that there are problems with the acreage, the map says 4 acres, they are paying taxes on 4 acres, do they use part of the road or do they not use part of the road. He noted that the ZBA asked the attorney for clarification but did not receive a definitive answer. He stated that in his opinion the applicants do not even need to be in front of the ZBA for a variance.

Mr. Dunn stated that the attorney said that the ZBA can look at granting a variance on a smaller lot, but that it has always been the ZBA's position to be against creating a substandard lot. He noted that the Town has not asked for a dedication nor has the applicant offered a dedication. He stated that he looks at it as being a 4 acre lot and that he's inclined to agree. He stated that if they split it down the middle, it becomes two 2-acre lots, which in his opinion is the way to go.

Mr. Vogt stated that, without stopping and looking at the history and the files of what happened in 1987 by the Planning Board, he's reluctant to make a decision. He stated that if the ZBA rules on this tonight he has a problem with creating a substandard lot. He

stated that since he's been on the ZBA there has always been continuity on this issue. He stated that he has a problem because the property owner has a home on the property and has use of the property as it is now. He stated that he is against creating a substandard lot and that he cannot knowingly do that.

Mr. Dunn stated that he would look at the applicant's deed that says it is a 4-acre lot on which he is paying taxes and that one of the unique problems he has is that his land is on almost a switchback on the road, so he loses more than other properties on that road. Mr. Vogt stated that part of the problem is the multiple curves in that area on the road. Mr. Dunn stated that, therefore, calling it a 4-acre lot and splitting it down the middle creates two 2-acre lots. Mr. Vogt stated that if the ZBA acts on it tonight he would oppose it and that he wants to see what was presented to the earlier Board, the records from 1987 to see what criteria were used by the Planning Board to take what action back then. Mr. Dunn noted that the applicant still must go back to the Planning Board even if they get an approval from the ZBA tonight.

Mr. Gerstner stated that if the ZBA is of the opinion that it's a 4-acre property and to split it down the middle, then appealing for a variance is not necessary. Mr. Vogt stated that he is asking for an interpretation and that he cannot go with that. Mr. Gerstner stated that the ZBA could decide that no decision is required. Mr. Vogt stated that he could not go with that.

Mr. Maucher stated that he does not want to hold the applicant up any longer than is necessary for a decision but that he is in agreement with Mr. Gerstner and with Mr. Dunn. However, he stated that he would defer to Mr. Vogt that if he would feel better having the opportunity to see what took place in 1987, he would go along with that.

Mr. Vogt stated that he does not like to delay anyone. Further, he noted that the Board would have the 30 days to do the research and be very fair to the applicant.

Mr. Dunn stated that he spoke with Joe Labriola, chairman of the Planning Board, and noted that every application must be reviewed on its own uniqueness and that he was leaning towards calling it a 4 acre lot and allowing the applicants to subdivide into two 2-acre lots because of the special circumstances – he has so much frontage and the road switches back there which puts him at a greater disadvantage. Also, he noted that the Town has not asked nor has he offered to dedicate that part, consequently that part is still his. Mr. Dunn noted that even if you give someone an easement over your property, it is still your property on which you are paying taxes. It is still considered to be yours. Consequently, Mr. Dunn stated that he looks at it as being a 4 acre lot. He stated that if the Board is split 2-3 on the appeal, as much as the applicant would like to get going on his project and as much as the ZBA would like to complete the appeal, it may be in all fairness to the applicant for the ZBA to do more investigation. Mr. Vogt stated that he thinks it would benefit the applicant at this point to do the research.

Mr. Dunn asked Mr. Friedrichson how difficult it would be to access the 1987 decision. He stated that he had already spent a couple of hours looking through 1987 subdivision

files. But he stated that he now has the name of the subdivision and that he will look again through the minutes of the meetings but he cannot promise he will find anything. He stated that he knows the minutes are short and not very informative, so it may be necessary to find the actual file that is buried somewhere in the vault, but it can be found.

Mr. Dunn stated that, at the risk of the applicant being turned down at this point, and because the ZBA has a total of 60 days before it must render a decision, he thinks the ZBA should take the 30 days to do the research and adjourn the appeal to the next meeting. Mr. Vogt stated that he thinks that would be in the applicant's best interest. Mr. Gerstner stated that he considers it a 4 acre lot.

Mr. Dunn asked if the Board wants to adjourn or take some other action. Ms. Perkins stated that she wants to make a motion that it is a 4 acre lot. Mr. Dunn stated that in that case the ZBA does not need to grant a variance. Mr. Vogt stated that knowing the information and being on the ZBA for as long as he has, it is not a 4 acre lot per se and, therefore, he wants to do the research on what was done in 1987. Therefore, Mr. Vogt stated that he would have to vote against the appeal tonight. He noted that the ZBA has never created a substandard lot and he does not want to start now, and that is exactly what the Board would be doing knowing the information that they have now. Following the attorney's guidance, Mr. Vogt noted that the Board would be creating one substandard lot. Mr. Vogt stated that he cannot say it is a 4 acre lot because of his years on the Board and knowing the Board's decisions in the past.

Mr. Gerstner asked how the Board is creating a substandard lot if the Board grants the applicant's appeal. Mr. Vogt stated that by stating it is a 4 acre lot, the Board is doing that because it is going against past history on file stating that this is deducted as a part of, and it's not a 4 acre lot. Mr. Vogt stated that he wants to see what Planning did. Mr. Maucher referenced the survey that showed 4 acres. Mr. Voted noted that the survey goes to the center of the road and that in the past the Board has deducted that and from that the Board cannot grant a substandard lot. He wants to see the file to know what the Planning Board decided on the subdivision. He stated that his perception of this as creating a substandard lot would change based on the 1987 file. Mr. Dunn stated that what the ZBA decides on this case will set a precedent. Mr. Vogt does not want to change what has been consistent for the 17 years he's been on the Board.

Ms. Perkins asked if they want to wait the month. Mr. Dunn responded yes. Mr. Vogt stated that he thinks it is to the applicant's benefit to adjourn.

**Mr. Vogt: MOTION TO ADJOURN THIS APPEAL TO NEXT MONTH.
SECONDED BY DUNN. VOTE TAKEN AND APPROVED.**

Someone from the audience stated that other substandard lots have been created in the area because of the problem with the surveys going to the center of the road and that the Board has set a precedent. Mr. Dunn and Mr. Vogt corrected the speaker by stating that it was not this Board that created those lots.

Mr. Friedrichson asked the Board if it wants to see the file on the other three lots. Mr. Vogt stated that he wants to see all of them. Mr. Dunn noted that Alos was not part of the previous subdivision as there is a property between Alos and what formerly had been Haight. And, he stated that Haight is the one that subdivided. Mr. Vogt stated that he wants to see the information on the Haight file from 1987 because that is what was presented and what will give him information on this appeal. Mr. Friedrichson stated that he will try to find whatever he can find.

3. APPEAL #871 STELLINI (VINTAGE BUILDERS) – VARIANCE

Mr. Dunn asked for discussion and stated that he's torn on this appeal. Mr. Vogt stated that at the last meeting of the Board they discussed the issue of the size since it is a non-conforming property. He noted that in the past all non-conformity has been increased pertaining to the footprint of the existing structure where it stands. Since this lot, itself, is not going to be conforming unless the applicant buys an adjacent piece of property to bring it up to the 2 acre zoning, Mr. Vogt stated that the property will remain non-conforming with a non-conforming structure.

Mr. Vogt stated that he does not like to see building being done in the flood plain. Therefore, he stated that this would be one of the few times that he would have less of a problem with changing the Board's policy of building a structure on the same footprint. He referenced a property off of Creek where the Board had difficulty finding the footprint because of a fire on the site. He noted that in this case the non-conformity of the lot size cannot change. Therefore, what is there now as a structure, if the new structure was proposed and it was possibly as 1200-1500 sq. ft. structure, it's a more presentable case because it's a reasonable size for the minimal size lot that is non-conforming. Bringing it up to a 1000 sq. ft. would bring the building size into conformity. He noted that the substandard non-conforming lot predates zoning. He stated that he has some issues with the proposal to increase the structure to such a magnitude, especially with the flood plain and the type of septic. Mr. Vogt stated that he knows that water is not the purview of the ZBA, but the possible impact on the water for the adjacent landowners has to be part of the Board's concern because it is changing the character of the neighborhood by virtue of what the Board permits or does not permit on this site. Being the size of the structure, Mr. Vogt stated that he cannot go with what is proposed.

Ms. Perkins stated that she also has a problem with the size of the structure and the fact that it has been reduced by only a very small amount. Mr. Vogt noted that the reduction is only 100-125 sq. ft., which is 4 times what it's supposed to be. Mr. Dunn pointed out that the new structure must be a minimum of 1000 sq. ft. Mr. Vogt noted that the Board discussed in the presence of the applicant that if something were proposed that were about 1200 possibly maximum size 1500 sq. ft. all totaled, the Board might be more receptive. Mr. Vogt stated that going against what the Board had because (a) the proximity of where the original structure was in the flood plain by the creek in the back and (b) they could have also presented turning the building so it sat long way and have more side lot area so that the narrower portion would be facing the road. Mr. Vogt stated that what has been presented is too large for the size of the lot with the type of land because of the flood plain, proximity to the creek, the type of maintenance required on

the effluent to prevent it from reaching the creek. He stated that by recognition of what they stated that the Board of Health wanted to see some changes to the original plan, clearly they were not happy with what was initially proposed. He stated that he thinks it is too much of a structure for the piece of property in question site specific – not the .988 acres but rather the type of land that the acre is made up of – proximity to the creek and in the flood zone.

A Board member stated that he agrees and that he does not have much of a problem with the septic system which seems adequate to him. But he stated that he has a problem with the size of the building and the run off possibilities from the build up in the back for the septic overflow – the neighbor stated that he now gets flooded because of the retaining wall that has been already put up.

Mr. Dunn stated that he knows that it is not necessarily the ZBA's job however he asks by building a 1200-1300 sq. ft. house, that would make the footprint smaller but it would be a lot less attractive in the neighborhood. He also stated that he thinks they would be hard pressed to get two bedrooms into 1200-1300 sq. ft. house which he stated that he knows is not the Board's problem. He noted that the ZBA is not here to ensure that an applicant makes money on a venture. However, logically looking at it Mr. Dunn stated that he wonders what benefits the applicant would get from that land by having the reduce the square footage further.

Mr. Vogt stated that a structure of this size on this type of land is a massive proposal, which is one of the issues he has with this applicant. He noted that any structure is an imposition on this property if it goes too much over what would be legally permitted to make it a conforming structure. He stated that he does not like to have little structures built, but this land itself does not support a massive building. He stated that it will change the character by nature of the land itself. Having a cottage or cabin in the back all these years, a bungalow, he stated that if it were in use all this time would not be changing anything that's been going on. He noted that it had its water and septic in the existing structure back by the creek, but that house has been there since the '40's – an existing structure that was there. He stated that it's a massive project with the size of the property proposed with the other factors. He stated that if it were a high, dry, one acre – the Board has seen it and done it and granted it. But he noted that the make up of the land does not seem to support what's proposed.

Mr. Maucher stated that he does not see what would be achieved by reducing the size of the house. He stated that all of the concerns that were expressed by other members of the public still remain – they do not want the house to be built there. He stated that the only way to address their concerns is by having no building there at all. He stated that he does not want to encourage the owner to rebuild in an area where there is the flood plain with the current footings that exist now. He stated that it does not make any sense to do that.

Mr. Dunn noted that Mr. Vogt has stated that the proposed house would be detrimental to the neighborhood. Mr. Vogt stated that the existing cottage has been there since the '40's – where it is on the property and how it has been used over the years – somebody owned

it and paid taxes on that property for a number of years whether they occupied the structure or not. He stated that what's there and where it was placed on the land was created long before he moved into the town. He stated that the problem is with the proposed project and the changing of the footprint and by moving it. He stated that he does not want to see construction in the flood zone, he would not want to see it in a wetlands area because it's going to encroach within 100' of the creek. He stated that this would be detrimental. Further, he stated that a project of this magnitude – 1458 sq. ft. first floor and a 687 sq. ft. basement and 713 sq. ft. garage – 2200 sq. ft. home plus a garage – a 3000 sq. ft. structure. He noted that they were talking 3200 sq. ft. last time, which is now less than a 200 sq. ft. reduction of what was discussed. He stated that he thought the ZBA was clear in its statement that if a smaller structure were proposed, it might be more beneficial because it would conform to the required structure size – the minimum 1000 sq. ft. requirement – as well as moving it from the original footprint. He stated that this is one of the few times he would want to see the footprint moved. He noted that if the structure were turned the other way, there would be less visual impact to all concerned with a larger side lot and less encroachment on the neighbors. He noted that the ZBA is supposed to go for the least amount of impact and that they are supposed to make it conforming if possible. He noted that the applicants said they were going to reduce the size 2' so there would be no side variance required, but that they would be right on the setback lines. Mr. Dunn checked the file and confirmed that no variances from side setbacks are requested. Mr. Vogt stated that it is a massive structure for the type of land, and he noted that the Board is supposed to look at each case on its merit and the piece of land. He noted that part of this land is in the flood plain and part of it must have a septic for the structure being run to the back into the flood plain zone. He stated that it must be built to certain standards, which is increased cost, but it is such a massive size compared to the existing structure – a non-conforming structure on a non-conforming lot.

Mr. Maucher noted that they are not asking to encroach upon their neighbors beyond what the Code allows as far as the size is concerned. Mr. Vogt stated that they are asking to increase more than 4 times what was there, and that's his issue. Mr. Vogt stated that doubling in size, 1200 sq. ft., would be reasonable. He stated that he would feel comfortable stretching it to 1500 sq. ft. and that if he were a neighbor living adjacent to this property he would not want this massive structure sitting where it is in proximity to his property.

Mr. Dunn stated that he does not see it being that close to the other structures – not property lines. Mr. Vogt stated that he's talking property lines, the structures on the lot lines is an issue – it's one of the things on Bauer. Mr. Dunn stated that things on Bauer – keep in mind that they are cheek by jowl. Mr. Vogt stated that they are also smaller in dimension. Mr. Dunn stated that if the applicants were to propose something that Mr. Vogt would consider to be a more visually appealing house, i.e., narrower but deeper, wouldn't that encroach on their septic system. Mr. Vogt stated that he does not think it would, that it would not go any deeper by turning it – it's only a 10' difference. He also suggested that there would be less run off with a smaller structure – the bigger the

structure, the bigger the roof, and the bigger the run off, which must go somewhere and probably onto the neighbor's property.

Mr. Vogt also asked where the driveway would be placed – right up against the neighbors on the lot line? Mr. Dunn noted that this is not an issue for the ZBA. Mr. Vogt stated that it's all a part of the whole, because in order to have the required width for the driveway, where do you put the house? He noted that there have been other applications with similar problems. He stated that he does not think that what is in front of the ZBA is workable.

A Board member stated that to bring the building into compliance and even to go to 1500 sq. ft. would work, but to go all the way to 3000 sq. ft. is not OK. He stated that 1500 sq. ft. is a little bit more than the outer limits to be in compliance. Mr. Vogt noted that 1000 sq. ft. brings it into compliance with the Code. Mr. Dunn also noted that you can live with this because the pre-existing building is being removed and the new structure is being put in a different location on the property.

Mr. Maucher stated that he does not understand the logic. He noted that the Code says that in an R-2 zone the minimum is 1000 sq. ft. and, therefore, it could be 3000 sq. ft., 4000 sq. ft., or 5000 sq. ft. – the Code says minimum and dictates the smallest it can be not the largest it can be. Mr. Vogt stated if the lot can support it. Mr. Maucher stated that the Code does not address the issue of what the lot can support. Mr. Vogt stated that's exactly what the Board is here for.

Mr. Dunn asked if the Board wants to continue discussing it or take a vote. Mr. Maucher suggested that if it looks like it's not going to pass that the Board should at least offer them the option to wait until there is a full Board for the vote. Mr. Dunn stated that the Public portion has been closed but that it could be reopened. Mr. Maucher asked if the Board wants to discuss with the applicant the possibility of decreasing the size. Mr. Vogt stated that the Board did that last time and they came back with a 2' reduction and a little shorter height. Ms. Perkins stated that she thinks the Board was very clear. Mr. Vogt noted that the applicant also has the option of withdrawing this appeal and resubmitting at another time with a different proposal.

Mr. Vogt read the worksheet into the record (original on file):

- Appeal 871, dated 1/17/06, Mike Stellini, 465 Creek Road, R-2 Zone
- Variance from 98-60 and 98-12
- Proposed structure
- Detrimental to nearby properties: yes
- Undesirable change occur in character of neighborhood: any structure will change the character of the neighborhood, however what's proposed size-wise will not
- Alternative methods: applicant can propose something smaller in size, change the positioning of the home
- Substantial variance: yes – it's a non-conforming property with a non-conforming structure that has been on the property since 1946

- Effects or impacts on physical and/or environmental conditions: possible endangerment of the Wappingers Creek, neighboring wells, and run off
- Self-created hardship: no
- Benefit to applicant vs. detriment to community: detriment to community is greater because of the size of the structure, the type of land, positioning in relation to the Wappingers Creek.
- Therefore the above factors when considered together balance in favor of denying the variance.

Mr. Vogt: **MOTION TO DENY THE APPEAL; SECONDED BY MS. PERKINS**
Discussion: Mr. Maucher inquired when the lot was legally created. Mr. Dunn noted it was created in the '40's – 1946. Mr. Vogt noted that it predates zoning. Mr. Maucher asked if the Board has seen an abstract of title that says that. Mr. Vogt stated that the papers the applicants provided to the ZBA tonight stated it.

VOTE TAKEN AND APPROVED 4-1-0

4. MINUTES

Mr. Dunn: **MOTION TO APPROVE MINUTES AS CORRECTED OF THE ZBA MEETING ON 2/23/06 – VOTE TAKEN AND APPROVED 5-0-0.**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:53 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the March 23, 2006, 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
April 27, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on April 27, 2006, 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
 Rob Maucher
 Ronald Vogt
 Tim Gerstner
 Christina Perkins
 Lisa Rubenstein
 Don Sagliano, Alternate

Members absent: Helene Czech

Also absent: Dieter Friedrichson, Zoning Administrator

1. APPEAL #876 CAHILL – SPECIAL USE PERMIT

Mr. Dunn noted for the record that this application is for a Special Use Permit on a 1.13-acre property at 2178 Route 44 for the purpose of conducting a home occupation (home baked goods, baked by the applicant in her residential kitchen, for sale to local retailers, to be delivered directly to retailers by the applicant). He noted that the file contains:

1. affidavit of publication in The Poughkeepsie Journal dated 4/20/06
2. Planning Board comment form: positive recommendation
3. FAB comment: no comment as it represents no fire or safety issues
4. list of adjacent properties owners who were notified of this appeal and meeting
5. Zoning referral from the Dutchess County Planning and Development: no comment, it is a matter of local concern

Ms. Jennifer Cahill, 2178 Route 44, Pleasant Valley, NY was sworn in. She reported that she plans to bake items in her home and sell them to local delis. Mr. Dunn asked if there would be any employees or any customers coming to the house. Ms. Cahill responded no to both questions. She stated that she called Agricultural and Markets and found out what else she needs to do. She stated that when she's done at the ZBA she has the number to call for them to come to her home. She stated that she just had twins – a son and a daughter – and that she needs income and has time to bake while she's watching the children.

Ms. Rubenstein thanked Ms. Cahill for coming to the ZBA and applying for the permit because, based on the limited nature of her proposed business and the zero impact on her neighbors, no one would ever know if she were to just do her business without the permit. She noted that there would not be any delivery trucks coming to the house. She asked Ms. Cahill if she's planning on having a sign. Ms. Cahill responded no and stated that she will have her labels on her products.

PUBLIC HEARING OPENED

No one spoke.

PUBLIC HEARING CLOSED

Ms. Rubenstein asked Ms. Cahill if she has reviewed the section of the Code 98-24 that describes what is permitted for a home occupation – not more than one person outside of the family being employed in the home. Ms. Cahill responded yes and that it would only be she who will be working in the business.

Ms. Rubenstein noted that we always need high quality baked goods in the County.

2. APPEAL #877 – WHITE VARIANCE

Mr. Dunn noted for the record that this appeal is for a property at 56 West Road, R-O zoning, 1.1 acres and is for a variance from minimum acreage requirement for establishment for two additional apartments within pre-existing mixed use structure (no addition to the structure is proposed). He noted that the file contains:

1. affidavit of publication in The Poughkeepsie Journal dated 4/20/06
2. Dutchess County Department of Planning and Development zoning referral: on a county road – no comment – matter of local concern
3. Planning Board comment form: no recommendation
4. FAB: no comment as it represents no fire or safety issues
5. list of adjacent property owners who were notified of this appeal and meeting

Mr. Dunn noted that Mr. White is appealing 98-6 (A) and 98-12. Ms. Rubenstein noted that nothing is checked off on the application and questions if it was a denial – there's no indication on her copy whether it was denied. Mr. Vogt stated that it is not indicated on his copy either. Mr. Dunn noted that the denial is noted on the original copy of the appeal.

Mr. Dunn stated that this is a pre-existing non-conforming mixed use retail sales and residential on the property and that the applicant wishes to add 2 more apartments for a total of 3 apartments plus the retail space on the property. However, he noted that no additional construction is proposed. He noted that it is a 1.1 acre parcel in a R-O zone which requires ½ acre per use. Therefore, 2 acres are required and the applicant needs a .9 acre variance.

Mr. Richard White, 56 West Road, Pleasant Valley, NY was sworn in.

Ms. Rubenstein clarified that this is an area variance for 2 apartments in a commercial building. She noted that in the Code there is no actual definition of “mixed use.” Mr. Friedrichson clarified that there are 3 existing residential units in the building along with an existing floral shop. Mr. Dunn stated that the variance required is .9 acre because the applicant has insufficient acreage for each of the residential units. Mr. White stated that he is not adding anything to the property. Ms. Rubenstein explained that the reason she's

being precise is that when the ZBA rules on the appeal the Board must know what it is granting.

Mr. Vogt asked when the apartments were created. Mr. White stated that they were created in 1979, 1985, and 1989. He stated that the earliest apartment is the down/up apartment. Ms. Rubenstein summarized that there are 3 apartments that did not conform with the Zoning Code when they were created. Mr. White stated that he believed that one apartment was conforming but that he's not clear on that. Mr. Friedrichson stated that the assessor's records show that one apartment was there at the time Zoning was instituted in 1974. He stated that he should have gotten a building permit for the first apartment and that there would have been no problem with acreage.

Ms. Rubenstein asked Mr. White how long he has owned the property. Mr. White stated that he's owned the property since 1966 and that he has lived there 65 years.

Mr. Vogt asked Mr. White if he applied for a permit for the first apartment. Mr. Friedrichson stated that there have been no applications for permits and that a variance is required and then a site plan approval.

Mr. Maucher asked what was denied. Mr. Friedrichson stated that he did an abstract letter based on the records that only showed one apartment and asking where the other 2 apartments came from. Ms. Rubenstein stated that she wanted to clarify that the ZBA only has appeal power, which means that if there's been nothing denied the Board has nothing to decide on. She stated that the applicant must apply for a permit, which must be denied prior to appearing before the ZBA. She stated that the ZBA cannot render advisory opinions unless the applicant comes for an interpretation, which the Board can do. She asked Mr. Dunn for clarification on the notification on the original appeal which states that something was denied and stated that this is not really correct. Mr. Friedrichson stated that the permit application would have been denied if it had been submitted. Ms. Rubenstein stated that the Board does not get to decide based on something that would have happened. Mr. Vogt stated that the applicant must first apply. Ms. Rubenstein stated that the ZBA's authority is really limited and that there must be a prior decision in order for an appeal to be submitted to the ZBA. Mr. Vogt concurred that there's nothing to appeal. Ms. Rubenstein stated that, as a technical matter under the Code, the Zoning Administrator must make a decision before the ZBA can render a decision. She noted that the record needs to be correct and suggested that the Board members should receive a copy of whatever has been denied because that specifies what the applicant needs. Mr. Vogt concurred that it clarifies what they need and what they're applying for. Mr. Dunn repeated that the original in the file says denied. Mr. Maucher noted that there should be a permit number if it were denied. Ms. Rubenstein suggested that the ZBA be cautious in the future that if the application is not denied something and is asking for an interpretation, then it should not be on the agenda. Mr. Maucher stated that this is not a technical issue, it simply was not denied. Mr. Vogt concurred that this issue is important.

Ms. Rubenstein stated that she thinks the Board should proceed. Mr. Friedrichson stated that he can fill out the application tomorrow and deny it. Ms. Rubenstein asked Chairman Dunn that when he reviews the applications in the future, if there's no actual permit that has been denied that it be taken off the agenda.

Ms. Rubenstein asked Mr. White if there was a reason that he did not apply for permits when the apartments were created. Mr. White responded "not really," and stated that he had the store and that he built his apartment. He stated that in the beginning he didn't understand what was required and as time went on – that he was there before Zoning – things developed and he stated that he just didn't keep up. He stated that the store was there and that he lived in the house next door. Ms. Rubenstein asked what brought him in for the appeal. Mr. White stated that he's selling the property.

PUBLIC HEARING OPENED

No one spoke.

PUBLIC HEARING CLOSED

3. APPEAL #878 FRIENDS OF MID-HUDSON YOUNG LIFE "THE BARN" – VARIANCE

Mr. Dunn noted for the record that this property is at 1416 Route 44, R-O-A zone, and is an appeal for a variance from maximum square footage of a sign allowed in that zone – new wall sign on building replacing pre-existing non-conforming ground sign previously on site. He stated that this needs to be corrected because it is not a wall sign but is a hanging sign. He noted that the file contains:

1. affidavit of publication in The Poughkeepsie Journal dated 4/20/06
2. Dutchess County Department of Planning and Development zoning referral:
matter of local concern
3. Planning Board recommendation: positive recommendation
4. FAB: no comment as there are no fire or safety issues
5. adjacent properties owners who have been notified of this appeal and meeting

Mr. Dunn noted that the Friends of Mid-Hudson Young Life has been denied a sign permit and are appealing 98-20(A)(1) – the size of the sign.

Ms. Mary Clark, managing director of The Barn Thrift Shop, P.O. Box 245, Salt Point, NY was sworn in. She stated that the previous sign was not in compliance and that the new sign isn't either. She stated that they would like to keep the new sign and that they did not get a permit for it before it was installed, that they were in a hurry for their grand opening.

Mr. Vogt asked what the dimensions of the new sign are. Ms. Clark stated that it is 21.58 square feet.

Mr. Dunn stated that the ZBA has always been very tough on sign permits and with good reason the Board has never had a case overturned. He asked whether Ms. Clark had considered attaching the sign to the building. Ms. Clark responded that they did talk

about that after they discovered that the new sign was not in compliance with regulations. Further, she stated that given the angle she does not think the sign would be visible if it were attached to the building. Mr. Dunn stated that they can have 1.5 sq. ft. of sign for every linear foot on the front of the building. Therefore, he noted that if the front of the building were 40', they could have a 60 sq. ft. sign, even though that would seem ridiculous. Mr. Friedrichson corrected that this would only pertain in a commercially zoned district, which this is not.

Mr. Maucher asked if the existing sign is in the ground. Ms. Clark stated that the old sign was in the ground. She stated that they re-did one whole side of the building. Mr. Vogt spoke to the Board's efforts to be consistent with signs. Ms. Clark asked what the maximum allowable size for this sign is. Mr. Dunn responded 6 sq. ft.

Ms. Clark stated that they are trying to make it look good with the new part of the building and suggested that they box in the angle of the overhang for the sign. She stated that they will want to have a cross on it and asked if they can put it on later and not as part of the sign. Ms. Rubenstein and Mr. Vogt stated that a cross is not a sign, but is more of a decoration. Ms. Rubenstein read the portion of the code that defines a sign – religious symbols are not signs.

Mr. Dunn stated that the Board realizes that Ms. Clark's suggestion would be additional work for them and stated that it would be the ideal solution. He noted that a 2' x 3' sign that says "The Barn Thrift Shop" and paint around it would not need a variance. Mr. Friedrichson noted that they would not need a variance and could go straight to the Planning Board for a sign permit.

Ms. Perkins asked Ms. Clark if she is withdrawing her appeal for a variance. Ms. Clark responded that, yes, they are withdrawing their appeal for a variance. She asked if there is a time limit. Ms. Rubenstein suggested that she meet with the building inspector.

Ms. Rubenstein noted that there is a violation because the sign that's in place now is too big. Mr. Friedrichson stated that the sign that is too big must come down and that they must make an application for the correct size sign. He stated that if he were to cite her for the violation he must give her 30 days to respond.

4. APPEAL #869 FISCHER – VARIANCE

Mr. Dunn noted that this property is located at 183 Bower Road in ROA zone and is an appeal for a variance from minimum side setback requirements for proposed addition to pre-existing residence. He stated that this appeal was adjourned from the January 2006 ZBA meeting and that the Public Portion of the hearing was never closed.

Ms. Rubenstein asked if this is now an amended application and whether the file contains an amended application. Mr. Dunn stated that the file only contains the original. Ms. Rubenstein noted that the Board needs an amended application, that "amended application" needs to be written on the front. She explained that it's a question of the record, so that later on there's no confusion regarding what plan was approved. She

suggested that a photocopy of the original application be made, that the words “amended application” be written on it, and that it be filed with the new plan attached while keeping the original in the file. For the record, the applicant wrote “amended” on the first page of a copy of the original application, dated it 4/7/06, signed it, and attached the new plan to it.

Mr. Daniel Fischer was present and was previously sworn in.

Mr. Vogt asked what the dimensions are of the original structure. Mr. Fischer responded 20’8” x 30’6”. Mr. Vogt asked what the total height of the proposed one-story addition will be. Mr. Fischer responded that he thought it was computed on the plan and that it is approximately 16” higher than the existing building. Mr. Dunn stated that if the Board votes in favor of the variance they need to know exactly how much the variance is. Mr. Fischer stated that the existing building is exactly 15’ from grade to peak.

Mr. Fischer stated that there’s also a reduction in the size of the existing building before they build the addition. He stated that they are removing the existing shed roof on the back; therefore the total finished square footage is just under 1000 sq. ft. He stated that he tried to stay within the parameter of only increasing the size by 50%. Mr. Vogt stated that he will be in compliance with the addition to 1000 sq. ft. which will make it a conforming building even though the lot is substandard.

Mr. Dunn asked if it will be parallel to the property line. Mr. Fischer responded that it will be as best as possible, that he will square it off and that he does not plan on jogging it at all. He stated that he will need a 4’ variance for the landing on the side and that the building foundation is still more than 15’ from the neighbor’s property line. Mr. Dunn reported that the variances required are: 4’4” on the left side, 4’ on the right side. Ms. Rubenstein clarified that he does not need a variance on the height. Mr. Dunn concurred that he only needs variances on the side lots. Mr. Vogt noted that he’s bringing the building into compliance with the increase in aggregate size.

PUBLIC HEARING OPEN

No one spoke.

PUBLIC HEARING CLOSED

5. APPEAL #868 ALOS – VARIANCE

Mr. Dunn noted that the Board has already heard this application and that the Public Portion of the hearing was previously closed. He noted that the Board will discuss this application this evening.



DISCUSSION

1. APPEAL #868 ALOS – VARIANCE

Don Sagliano did not participate in the discussion or the vote as he was not present for this appeal.

Mr. Dunn asked the Board for its thoughts on this appeal. Mr. Vogt stated that he reviewed the Haight record. He noted that this property has almost a ½ acre reduction in size because of the design of the property on the winding road, that it is not the same as neighboring properties on the road that have 1/10 of an acre reduction. Therefore, it would be substandard by ½ acre due to the property design on a curve and all of the road frontage. He stated that the Board would be creating a substandard lot if this appeal is approved.

Ms. Rubenstein stated that her concern is that the Board has had other applicants come in with similar problems and the Board has sent them away. She stated that the Board told a previous applicant that they did not need a variance, that it is not an issue that the ZBA should address because they had sufficient property. She stated that she is very concerned about the idea of granting a variance to create a substandard lot. She stated that she is as sympathetic to this applicant as anyone on the Board, but that her concern is that because the Board has an obligation to comply with precedent that if the Board creates a substandard lot for this application, it becomes difficult to decide at what point it is inappropriate to create future substandard lots. She asked where the Board then or now draws the line. Mr. Vogt concurred with this analysis.

Ms. Rubenstein stated that her concern is that as the Town gets more developed, there will be more lots that are difficult, lots that are slightly undersized. She noted that as the really easy to develop land is completed, you get the more difficult to develop land. She stated that the Town has a Code that delineates lot size and that she thinks this should be a Town Board matter. She stated that this is a policy decision that the Town Board should make, that they are willing to allow this property to be considered 4 acres under the subdivision regulations and that they are entitled to their two lots. She stated that the ZBA addresses individual problems and that this is not an individual problem – it is not a problem that only this lot in the Town faces. She noted that this is a problem that numerous lots in the Town face. She stated that she's very concerned with what happens if the Board starts granting variances for substandard lots and the resulting dilemma of how decisions are made on future applications – this one's only .1 of an acre, that one's 1.5 acres. She stated that the ZBA did not make a determination on the one from 1987 – it never came before the ZBA. She stated that when the applicant from Pine Hill Road came to the ZBA, the Board told them that they needed to address the issue of acreage with the Town Board. She stated that she is sympathetic, but that it is not just this application that is affected by this issue. She stated that the ZBA will have many more appeals like this which will result in substandard lots. She stated that she does not think the ZBA should grant this appeal, the Zoning Code states that it should be 2 acres. She stated that the Board balances the issues, but how do you balance that some people have to have 2 acres and others don't.

Mr. Gerstner stated that he does not think this applicant should even be before the Board, that they are paying taxes on 4 acres. He stated that he thinks the Planning Board should decide what part of the road becomes theirs and what part of the road becomes the Town's. Ms. Perkins stated that the deed has not changed, it says that they have 4 acres

and that they are taxed on that acreage. Mr. Gerstner stated that he does not think the ZBA should make a decision on this, rather that it should be the Planning Board that decides. Mr. Dunn noted that he cannot see telling the applicant to go back to the Planning Board with a message from the ZBA.

Mr. Dunn stated that he agrees that the applicant has 4 acres, they are paying taxes on 4 acres, they did not deed that piece to the Town, and the Town would like the right-of-way. He stated that everything the ZBA fields is on a case-by-case basis. He stated that this case is unique because their land is almost on a switch back – were it on a straight away it would be another story. He noted that so much of that land is road frontage. Mr. Vogt stated that, therefore, they are losing more than the average property with similar circumstances. He cannot approve a variance that results in a substandard lot. Mr. Dunn stated that he does not think they are creating a substandard lot. Mr. Vogt stated that due to the road frontage one of the lots will be 1.5 acres and that the ZBA would be creating a substandard lot. He stated that he concurs with Ms. Rubenstein's analysis that once the ZBA starts granting substandard lots, it opens the door for other difficult pieces of property from the past or in the future.

Mr. Dunn stated that his issue is with the Planning Board that sent the applicants to the ZBA for a variance. He stated that he's looking at it logically – the applicants have a deed for 4 acres on which they are paying taxes, therefore no variance is required. Mr. Gerstner concurred with this analysis.

Mr. Maucher stated that it seems that there is no general agreement on the Board as to whether the applicant has 4 acres. Ms. Rubenstein stated that she thinks the Board is in agreement that it is 4 acres. Mr. Maucher stated that, therefore, they don't need to be here. Ms. Rubenstein concurred and stated that the ZBA's grant of a variance would be interpreted as an approval of a substandard lot based on what has been presented to the Board. She stated that the plan that was presented to the ZBA assumes that it is not 4 acres, the application states that they are going to make one lot smaller than 2 acres. Therefore, she stated that this would be interpreted in the community as an approval of a substandard lot, which the ZBA has only done when the lot pre-dates zoning. Ms. Rubenstein stated that she and Mr. Vogt agree on this point. She does agree that the applicant has 4 acres and she recalled the previous applicant on Pine Hill Road whom the Board advised to go to the Town Board. She stated that this application was presented as a substandard lot and that she will vote no.

Mr. Maucher asked what the options are for the applicants. Ms. Rubenstein stated that the ZBA approves or denies the variance for a substandard lot. Mr. Gerstner stated that the ZBA can either approve or deny, or the applicant can withdraw the appeal. Ms. Rubenstein stated that the ZBA's approval or denial other than what the Board has said that it thinks it's a 4 acre lot is not precedential in terms of anything they do in front of the Town or Planning Board. She stated that she understands Mr. Dunn's concern and that she feels the same way and is of two minds, the applicants have had to struggle through the process and so has the Board. She stated that the Board is sorry that they have had to come back and hear the Board discuss this over and over again. But she

stated that she thinks this shows the serious nature of this issue and how seriously the Board considers it.

Mr. Maucher asked where the decision correctly resides – is it with the Planning Board or the Town Board. Ms. Rubenstein stated that, as she's said from the beginning, show us in the subdivision regulations where it takes out road easement as something that could be calculated in lot count. She noted that some Towns make applicants deduct acreage for wetlands on a property when proposing to subdivide, which reduces the number of lots that would be allowed on that property. She stated that generally speaking in subdivision regulations there are some calculations that direct what things must be deducted from acreage. She stated that she has asked a number of times what the Planning Board's policy is on this issue and that she's still confused on what the policy is. Further, she stated that she does not think this policy was ever adopted by the Town Board as a law, but that maybe it was. Therefore, she stated that it could be that the Town Board has already addressed this, but she has no way of knowing this. She stated that all she knows is that the property looks like 4 acres and the application is to create a substandard lot. If the Planning Board has already decided that road easement does not count and that you don't get 2 lots because they've taken the road easement, then that's a policy decision which she would not want to tamper with anyway.

Mr. Dunn stated that the Planning Board has decided that road easement does count as a deduction from acreage and that's why they sent this applicant to the ZBA for a variance. He noted that the Planning Board gave a positive recommendation to this appeal. Ms. Rubenstein asked what happens to the subdivision on Avon Road with the big pond. She noted that the subdivision regulations say that they really should only get 11 lots, but we think you should give them 12. She stated that the Planning Board is saying that they are not willing to waive their regulations but that it's OK if the ZBA does it. She stated that she does not think the ZBA should. She stated that the Planning Board can waive their regulations without setting a precedent but that the ZBA has case law that establishes precedent. She stated that, if the ZBA grants this one, then how does the Board then say no to the next person who has a substandard lot. Mr. Dunn stated that the ZBA takes it on a case-by-case basis.

A Board member stated that if they go back to the Planning Board, they are wasting their time. Mr. Dunn stated that, yes, these applicants will be tap dancing from one board to another. He noted that they are residents of this town and have been before this board for 3-4 meetings already. He read from the Planning Board minutes: "the rationale for the positive recommendation is that it appears that the applicant does meet the minimum bulk requirements. However when you take away the property that is in the 25' right-of-way, it ends up being just slightly under 1.5 acres. Based on input from the Board received from the applicant at the December 2005 Planning Board meeting, there are other lots in the neighborhood that fall into the same category. Therefore, the Planning Board believes that this is consistent with the nature of the neighboring properties. If the ZBA does grant the variance, it is a requirement that it comes back before the Planning Board for a full subdivision review." Mr. Maucher stated that they are not basing that on any kind of policy or practice that the Planning Board follows; they are just saying that "it

appears to be.” Ms. Rubenstein asked again to see the subdivision regulations that state that you take off the road easements, you take off the wetlands, you take off this, and you take off that. She asked what happens when a developer of a large piece of property comes and they decide that they have a 1.5 acre lot where they are supposed to have 2 acres. Mr. Vogt asked what happens when this developer wants to create 3 or 4 such lots because of the curvature of the road. Ms. Rubenstein stated that although the Board deals with things on a case-by-case basis, if they grant something in one situation, it becomes difficult to not grant it in the next. Therefore, she stated that this is why the ZBA does not create substandard lots, otherwise there would be some kind of substandard lot all over town.

Mr. Dunn stated that having a small lot is one thing, but what bothers him is having a lot that is made smaller by some arbitrary element. Ms. Rubenstein asked, therefore, why there should be fewer subdivision lots because of a wetlands on the property. She stated that it is apparently arbitrary, but that there are things in subdivision regulations that do reduce the owner’s ability to develop on their property.

Mr. Dunn stated that ideally it would be nice for the ZBA to be able to say the applicants do not need to be before the Board because they have 4 acres. However, he stated that this does nothing for the applicants. Ms. Rubenstein stated that the Board has done that before and that she agrees that it does not solve their problem but that the Board must think about the next person who comes in with a substandard lot. Mr. Dunn asked why it is substandard and stated that it is substandard because the Town wants the easement. Ms. Rubenstein postulated a property that has a wetlands which, therefore, cannot be subdivided because it would create a substandard lot. Otherwise, she stated that the Board is not in the business of granting substandard lots. She stated that the Board needs to have its eyes open and that she’s not willing to make that move because of the probability of there being future applications for substandard lots. Further, she stated that she does not think a judge would determine that there’s a difference between a substandard lot for this reason (road easement) and a lot that is substandard because it’s a little too small. She stated that you don’t know what a judge will do. She stated that, if the Board grants this application, the next person comes in with a lot that is .1 acre too small and the Planning Board passes it to the ZBA for a variance, and then the ZBA denies it because there’s no reason – no sympathetic reason like this one. Then, she stated, a judge will grant that. She noted that given the decision the ZBA just received, the court does not care what this Board thinks or the amount of time it spent thinking about that decision and trying to do the best. She stated that the judge in that decision did not care what the ZBA’s rational basis was for its decision. She stated that the Board must be very careful about where it goes in the future. She stated that she’s 100% sympathetic to this application and the applicants.

Mr. Maucher stated that there remains the open question of whether the property is 4 acres. Ms. Rubenstein stated that it is 4 acres. Mr. Maucher stated that the ZBA has not received anything from the Town Planning Board that indicates one way or the other. Mr. Vogt stated that the minutes of the Planning Board meeting document their opinion that the lot is reduced to under 1.5 acres when the road easement is deducted. A Board

member stated that when you deduct the easement, the applicants have 4 acres. Mr. Vogt stated that if the Planning Board thought it was 4 acres, they would not have sent it to the ZBA for a variance and that the Planning Board is tap dancing because they don't want to be the ones to deny it. Mr. Dunn concurred. A Board member stated that he does not care about the Planning Board's reluctance to make the decision, that the ZBA does not understand whether this property is 4 acres. Further, he stated that there is no policy or law in the Town that clarifies whether this is 4 acres.

Ms. Rubenstein stated that she thinks the property is 4 acres. She stated that the applicants have a deed for 4 acres. She stated that the question is whether they would have the right to subdivide into 2 acres because there's a deduction in their usability of their property because of the easement. Mr. Maucher asked where that is stated. Ms. Rubenstein concurred that that has been her question from day one. Mr. Maucher stated that no one has answered the question that the Board has had every time it has considered this application.

Mr. Gerstner suggested that the Board make a statement that it recognizes this property as 4 acres. Mr. Maucher stated that if the Board does that then the applicants don't need to apply for a variance. Ms. Rubenstein stated that this creates the problem of sending the applicants back to the Planning Board with the message that the ZBA says they have 4 acres. Mr. Maucher asked whether that would then force the Planning Board to make a decision at that point. Ms. Rubenstein stated that the ZBA could issue a denial of the variance with a statement that from what the Board sees the applicant has 4 acres and no variance is required. She stated that she does not know what message the Planning Board would take from that.

Ms. Rubenstein stated that this application is for a substandard lot. Mr. Vogt stated that that is what the problem is. Ms. Perkins asked if it would be in the applicants' best interest to withdraw. Ms. Rubenstein stated that it would not matter if they withdrew. She stated that this does not mean anything in terms of the Planning Board if the ZBA denies a substandard application. She stated that if the ZBA denies it, the Board could still put in the statement that it believes it is a 4 acre lot and therefore it's not necessary to create a substandard lot in order to comply with the Code. She suggested that the applicants might be able to take that statement to the Planning Board. She stated that she does not have any problems with that approach.

Mr. Vogt stated that he would have to deny the proposal to create a substandard lot but that he concurs with adding the statement regarding the 4 acres and that, therefore, no variance is required to subdivide. Ms. Rubenstein stated that such a statement would not be binding on the Planning Board.

Mr. Vogt noted that another reason he cannot approve the substandard lot is because there is an existing home on the property, they have use of the property. He noted that there's no loss of use on the 4 acres that they have. He stated that there are many people in the town who have more acreage than required and have one residence. He referenced the Walkers on Ward Road who have 50+ acres in a district that requires 2 acres. He

stated that this applicants are not losing anything because they have a home on the existing property.

A Board member stated that that is not the point. Mr. Vogt stated that it is a point that they have a home on the property, the property according to their tax liability is a total of 4 acres, but what was proposed is a substandard subdivision which he cannot act on.

Mr. Maucher stated that it's no different from the Ramundo application – that the applicants are trying to maximize the use of their property. Ms. Rubenstein stated that there's nothing wrong with that, that it's within a property owner's right. She also noted that everybody in town is going to be trying to maximize their value with their substandard lots. Mr. Vogt stated that what the Board has before it is a substandard lot.

Mr. Dunn noted that Mr. O'Brian said that the base of the ledge is the natural dividing point to create two 2-acre lots, but by the Town's way of thinking or the Planning Board's way of thinking that would create two substandard lots as neither one of them would actually be 2 acres. Mr. Vogt stated that the application is a proposal for a substandard lot that is 1.48 acres – a .52 reduction in aggregate size.

Mr. Dunn concurred that the application as it is written should be denied because it is written as 2 acres and 1.48 acres. However, he asked if this is an interpretation. Ms. Rubenstein stated that it could be but that the Board would have to have something to interpret. She stated that she does not think that Mr. Labriola saying something at a meeting is something that the ZBA can interpret. She stated that there has to be a subdivision regulation that addresses this issue in writing, which the ZBA could interpret. She noted that an interpretation is binding on the next appeal that comes before the Board with a similar problem but it would not be binding on every substandard lot in the whole town. She stated that the minutes are not verbatim, there is no recorder transcribing the minutes word-for-word. She stated that the Board could issue an interpretation if there were something to interpret, but that she does not know what the Board is interpreting.

Mr. Dunn stated that, as much as he is in favor of these applicants subdividing their land and calling it two and two, he has a problem with this application as it is written asking for a variance for a substandard lot. He noted his concern regarding setting a precedent. Ms. Rubenstein noted that the Board has had similar applications in the past which have been uniformly denied. She stated that perhaps the correct way to proceed is to make the Planning Board put something in writing that the ZBA could interpret. She stated that if the Planning Board put in writing a policy – a policy would have to be passed by the Town Board. She stated that she asked permission to call the Town engineer, but that she was told that she should not, because of a billing issue. She stated that she was not allowed to call to get some clarification. Mr. Vogt suggested that Mr. Battistoni needs to be directed to do what's needed and that he could be approached. Ms. Rubenstein stated that the Ramundo decision has made her realize that although the ZBA recognizes a distinction, others do not. She stated that she's not ready to go out on a limb and allow a substandard lot. Mr. Vogt agreed.

Mr. Maucher stated that he would have to abstain because he does not have enough information to vote. He stated that the Board has conflicting information – documentation submitted by the applicant which indicates that it's less than 4 acres and other documentation that shows it as 4 acres. Further, he stated that he cannot make a clear decision on conflicting information. He stated that he would have no problem voting on it if there were no documentation that showed the applicants paying taxes on 4 acres. He stated that the Planning Board has given the ZBA no direction as to what the Town's practice or policy is on this. He stated that someone makes a comment in a meeting and he questioned if it is something that's established or just an opinion.

Mr. Gerstner stated that the ZBA adjourned this appeal for one month because there was no survey, then it was adjourned for another month because the survey did not have a seal on it. Ms. Rubenstein stated that she's willing to acknowledge that it's 4 acres. Mr. Gerstner agreed. Ms. Rubenstein stated, however, that the application is for a substandard lot. She pointed out that she is only voting on the application. She noted that a resolution that she will prepare will be to deny the application as submitted. She stated that she takes their word for it that they have 4 acres.

Mr. Maucher asked whether all the lots in his own subdivision meet the required acreage. Ms. Rubenstein stated that when their subdivision was created, no one was paying attention to wetlands and such, that the streams were bulldozed. Mr. Maucher stated that in his opinion they have 4 acres and they don't need anything from the ZBA.

Ms. Rubenstein stated that she believes that the applicants need something from the ZBA stating that the Board thinks they have 4 acres. She stated that they will receive a denial with a resolution that says the ZBA denies the application for a substandard lot because the ZBA thinks they have 4 acres and the ZBA has not received any written rule of the town that subtracts a road easement from a calculation for purposes of subdivision. She stated that they will take that to the Planning Board and ask to see the written regulation that's adopted by the Town Board that says that the easement gets deducted. Mr. Vogt stated that it gets resolved by putting it back to where it should have been acted on originally.

Ms. Rubenstein stated that the only other option is to give her permission to call the town's engineer and to get something in writing that documents deductions from subdivisions. She stated that the applicants deserve an answer and nothing that the ZBA does will preclude them from requesting an interpretation.

Mr. Dunn stated that the ZBA is a volunteer board and has a little more knowledge of town government than the average citizen and that the Board is trying to give the applicants something to take back to the Planning Board for a decision and/or an explanation of the policy.

Ms. Perkins stated that, rather than deny the application, what if the applicants withdrew it and went back to the Town Board. Ms. Rubenstein stated that the only advantage to a decision is that it's in writing, which they can submit to the Planning Board.

Mr. Maucher stated that he would prefer to deny the application based on the fact that the Board does not believe that the property is less than 4 acres. Mr. Dunn stated, therefore, the applicants do not need to be in front of the ZBA for a variance. Mr. Maucher stated that they can then legitimately question the Planning Board on their evidence. Ms. Rubenstein stated that they could have legitimately questioned the Planning Board from the very beginning.

Ms. Perkins asked if the ZBA can force the Planning Board by asking what the policy is – where's the Code that dictates that the easement must be deducted. Mr. Dunn stated that he does not know if the ZBA can do that. Ms. Rubenstein stated that when Mr. Dunn asked the Town attorney for advice, he was hoping to get an answer to that question, but that the attorney told the ZBA that the Board is on its own. She stated that that response was not useful. In her opinion, she stated that it is more useful for the applicant to have a denial from the ZBA based on its opinion that they have 4 acres. Then, she stated, the applicants consult an attorney and take their decision to the Planning Board which figures it out.

Ms. Rubenstein read the worksheet into the record. This is Appeal #868, decision date is 4/27/06, and application date is 12/15/05. Applicant is Anita Alos, 27 Hurley Road, Zone is R-2. Type of variance sought is Section 98-12 Schedule of Bulk Regulations and Section 98-6(D) which says that the minimum acreage size is 2 acres. The structure is proposed.

Ms. Rubenstein: **RESOLUTION TO DENY:**

Whereas the applicant has requested a variance from Section 98-12 Schedule of Bulk Regulations and Section 98-6 (D) to subdivide their property into one 2-acre lot and one lot of 1.48+/- acres, and

Whereas the Zoning Board of Appeals has considered the application on 1/26/06, 2/23/06, 3/23/06, and 4/27/06, and

Whereas the Zoning Board of Appeals considered all of the submissions, letters, and other items in the file. The background: The applicant's deed and survey show that the applicant has 4 acres. However, when the applicant applied to the Planning Board for a 2-lot subdivision, the applicant was advised that, due to the Town's easement for Hurley Road, the applicant could not use the full acreage for use in a 2-lot subdivision of 2 acres each. The Zoning Board of Appeals has requested information regarding any written subdivision regulations or Town Code addressing this reduction and has received no documentation.

Whereas the Zoning Board of Appeals is sympathetic to the applicant's situation, the Zoning Board has never granted a variance for the creation of a substandard lot. The Board is concerned about the precedential nature of a grant of an undersized lot since there are frequent applications for same. Although the Board is sympathetic to this particular applicant, the Board is concerned that the

substantial reduction in size of the second lot could be misinterpreted in the future by other applicants to pave the way for an erosion of the zones that have been established by the Town Board. The Board is especially concerned about the grant of a variance for an undersized lot on this property since this lot actually has 4 acres according to the owner's survey. Since the Board has not been advised by the Planning Board or the Town Board of any written policy or regulation requiring the applicant to deduct that acreage for purposes of subdivision, the Zoning Board of Appeals concludes that the property does not need a variance.

Whereas the Zoning Board of Appeals is particularly concerned about future properties coming in for substandard lot approval, the Board is compelled to deny the application.

Whereas, prior applicants have come to the Zoning Board with similar problems and have been advised that no variance is required constitutes another reason for the ZBA's denial of the variance.

Taking into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the Zoning scheme as established by the Town Board, the Zoning Board of Appeals determines that the detriment to the health, safety, and welfare of the community is greater and, therefore, denies the variance.

SECONDED BY C. PERKINS

Discussion: Mr. Dunn stated that he feels that the ZBA should go very strongly on record that the ZBA does not feel that the applicant needs a variance because the applicant has 4 acres. Further, Mr. Dunn stated that he thinks the applicant should be able to use that as ammunition to get a resolution to the problem, to get either the Planning Board and/or the Town Board to address this problem. He stated that, unfortunately, it is not the ZBA's place to do that, as sympathetic as the Board is to the applicant's situation.

Ms. Rubenstein noted that the ZBA has had similar situations where the Board has sent people away and stated that this is a significant factor in this decision. She stated that this particular issue must be addressed through the Planning Board or the Town Board. She stated that she thinks it is the Town Board that needs to address it.

Mr. Vogt stated that he thinks the resolution provides the applicant with the tools that they need to get the situation addressed.

VOTE TAKEN AND APPROVED 6-0-0

2. APPEAL #876 CAHILL – SPECIAL USE PERMIT

Ms. Perkins read into the record the **RESOLUTION TO GRANT THE SPECIAL USE PERMIT:**

Whereas the applicant Jennifer Cahill has submitted proof in support of her application for a home occupation, Section 98-24(B) in an R-2 zone, which under the Code of the Town of Pleasant Valley requires the issuance of a Special Use Permit, and

Whereas such proof has been duly considered by the Board at a public meeting,

Now therefore be it resolved that the Board finds that the use for which Special Use Permit is sought, to wit home business baked good items to sell off-site and under the conditions herein set forth will not be injurious to the neighborhood or otherwise detrimental to public welfare, and

Be it further resolved that the Board determines that in its judgment the Special Use is reasonably necessary for the public health, 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, utilities, 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 or 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 and/or time limitations are included with the issuance of this Special Use Permit:

- **compliance with 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 uses in the vicinity and area where the property is located.

MOTION TO APPROVE

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 7-0-0

3. APPEAL #869 FISCHER – VARIANCE

Ms. Perkins read the worksheet into the record:

- Appeal #869,
- dated 12/21/05,
- amended 4/6/06,
- applicant Daniel Fischer,
- property located at 183 Bower Road,
- R-O-A zone,

- Type of variance sought 98-12
- Setbacks: left 4'4" and right 4'
- Structure is proposed
- Requested variance will not be detrimental to nearby properties
- No undesirable change to the neighborhood
- Alternative feasible methods available to the applicant to use the property as is:
Yes
- Requested variance is not substantial
- No effects or impacts to physical or environmental conditions in locality – in fact it would bring the building into conformity with current zoning
- Variance is not the result of a self-created hardship – the structure has not been built
- The ZBA determines that the benefit to the applicant, if the variance is granted, is greater than the detriment to the health, safety and welfare of the neighborhood or community
- Therefore above factors when considered together balance in favor of granting the variance

MOTION TO GRANT THE VARIANCE

SECONDED J. DUNN

VOTE TAKEN AND APPROVED 7-0-0

4. APPEAL #877 WHITE – VARIANCE

Mr. Dunn stated that this applicant should not even be in front of the ZBA because he's in violation. Mr. Vogt agreed. Mr. Gerstner mentioned that the applicant discussed filling out the correct forms tomorrow and asked if that meant that he is withdrawing his appeal. Ms. Rubenstein stated that every time an applicant comes before the ZBA with a permit application for a pool that they've already built, the Board allows them to file the appeal even though they are technically in violation. Therefore, she stated that she does not have any problem hearing this appeal. She stated that she has a big problem granting it. Mr. Vogt agreed because what the applicant is proposing is, by his own admission, three different times and ignorance of the law is no excuse. Ms. Rubenstein stated that the Board did not let Quattro's do it. Mr. Vogt stated that if the applicant had proposed one apartment, it would be ½ acre for the business and ½ acre for the residence. But he noted that the applicant is proposing three apartments that are existing and that exceeds by a full acre the zoning requirement. He stated that this is a severe violation and that the only reason the applicant is before the Board is because he's trying to sell the property and needs a C.O. for an illegal building. He stated that he cannot grant in good faith what he is proposing, even though the Board does not have a formal denial. He stated that it does not make it right just because it's been built.

Ms. Rubenstein stated that the apartments don't predate the Zoning Code. Mr. Vogt stated that the applicant reported that he created that first apartment in 1979, the second one in 1985, and the third in 1989, so he knew what he was doing when he did it. Ms. Rubenstein stated that maybe he didn't but he's still charged with knowledge of the

Zoning Code. She stated that it goes back to the fact that the ZBA did not allow prior applicants (Quattro's) do it and that it's not fair to let Mr. White do it and not to have allowed everyone else to do it. Mr. Vogt stated that the Board must keep continuity and be consistent in its decisions. Further, Ms. Rubenstein stated that since there's some factual confusion about the one apartment that may have predated zoning, she would have let that one go. Mr. Vogt agreed and noted that Mr. Friedrichson stated that it was there on the original assessor's record. Mr. Vogt stated that he has a problem with the multiple apartments. He noted that if it were just one, he would have just over the required acreage for the business and the apartment. He stated that the multiple units create a problem.

Ms. Perkins asked if it is detrimental to the nearby properties. Ms. Rubenstein responded that it is definitely detrimental to nearby properties. Mr. Vogt agreed. Ms. Perkins asked if there would be an undesirable change to the neighborhood. Mr. Vogt responded that it would definitely be an undesirable change, even though it's been there for a while. Ms. Perkins asked what alternatives exist. Mr. Vogt responded that Mr. White can take the two apartments down or combine them all into one living space. He stated that, because of the confusion over what is on the assessor's record, he thinks Mr. White can have one business and one apartment. He stated that he can see the one apartment and one business being a non-conforming issue that predated zoning and that he would not have a problem with that.

A Board member stated that he was trying to figure out how he was able to get three units into that building – it doesn't look that big. Ms. Rubenstein agreed. Mr. Maucher noted that one is just in the back of the store and that the kitchen for the third apartment is on the first floor and the living quarters are upstairs. Mr. Vogt stated that it's a strange set up.

Ms. Perkins asked what impacts there would be for the physical and/or environmental conditions in the locality. Mr. Vogt replied that it overburdens the property. Someone on the Board mentioned a concern for the sanity disposal on the property. Mr. Dunn suggested that the worksheet should reflect that Mr. White is currently in violation for at least 2 properties and that based on that the Board thinks he should not be here. Mr. Vogt referenced the appeal on Masten Road where the Board required them to remove the bathroom and kitchen in an illegal apartment and make it a non-livable dwelling before they could come back before the Board because they were in violation. Ms. Rubenstein concurred. Mr. Dunn recalled an application that had an illegal mother-in-law apartment – the applicants were splitting up and wanted to sell the property.

Mr. Dunn stated that the detriment to the health, safety and welfare of the neighborhood or community is greater than the benefit to the applicant because the applicant is currently in violation on all three apartments – property is not large enough to sustain these dwellings in the Zoning District.

Ms. Perkins read the worksheet into the record.

- Appeal #877

- Dated 3/24/06
- Applicant is Richard White
- Location is 56 West Road
- Zone R-0
- Variance sought: 98-12
- Type of variance: Other
- Three residential units in a commercial building which is pre-existing use in residential zone
- Variance .9 acres – insufficient acreage for existing uses
- Three apartments were established: 1979, 1985, 1989
- Assessor records show that one apartment existed as of Zoning although Mr. White testified tonight that the apartment existed in 1979
- Mr. White has owned the property since 1966
- Reason for appeal is that the property is being sold
- Requested variance will be detrimental to nearby properties
- An undesirable change will occur in the neighborhood
- Alternative feasible methods available to the applicant: remove two of the apartments or combine all of them into one apartment
- Requested variance is substantial
- Effects or impacts from the variance to the physical and/or environmental conditions in the locality: overburden of the property
- Variance requested is a self-created hardship – Mr. White built all three apartments without any permits whatsoever
- 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. The applicant is currently in violation on all three apartments and acreage is only big enough for two apartments or one business and one apartment.
- Therefore the above factors when considered together would balance in favor of denying the variance.

MOTION TO DENY THE VARIANCE

SECONDED BY T. GERSTNER

VOTE TAKEN AND APPROVED 7-0-0

MEETING ADJOURNED BY CHAIRMAN DUNN AT 10:35 P.M.

Respectfully submitted,

Helen D. Dickerson

Secretary

The foregoing represent unofficial minutes of the April 27, 2006, 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
May 25, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on May 25, 2006, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:47 p.m.

Members present: John Dunn
 Rob Maucher
 Ronald Vogt
 Helene Czech
 Lisa Rubenstein
 Don Sagliano, Alternate

Members absent: Tim Gerstner
 Christina Perkins

Also present: Dieter Friedrichson, Zoning Administrator

1. MINUTES

Mr. Dunn: **MOTION TO APPROVE THE CORRECTED MINUTES OF THE 4/27/06 ZBA MEETING; SECONDED BY L. RUBENSTEIN; VOTE TAKEN AND UNANIMOUSLY APPROVED**

Mr. Dunn: **MOTION TO APPROVE THE CORRECTED MINUTES OF THE 3/23/06 ZBA MEETING; SECONDED BY R. VOGT; VOTE TAKEN AND UNANIMOUSLY APPROVED**

2. RAMUNDO

Ms. Rubenstein: **Motion to direct the Town attorney to take whatever steps are necessary to appeal Judge Pagonos' decision on Ramundo; SECONDED BY R. VOGT.**

Discussion: Mr. Vogt asked about directing that no permits be granted prior to the appeal process. Ms. Rubenstein stated that it is her understanding that this has already been handled. Ms. Czech stated that this happens automatically.

VOTE TAKEN AND APPROVED 6-0-0

MEETING ADJOURNED BY CHAIRMAN DUNN AT 8:25 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the May 25, 2006, 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
July 27, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on July 27, 2006, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:45 p.m.

Members present: John Dunn
 Tim Gerstner
 Ronald Vogt
 Helene Czech
 Lisa Rubenstein
 Don Sagliano, Alternate

Members absent: Rob Maucher
 Christina Perkins

1. APPEAL #879 – HERRIMAN – VARIANCE

Mr. Dunn noted for the record that this application is for a variance from minimum setback requirements for construction of a deck on a mobile home in the Cedar Hollow Mobile Home Park.

Mr. Christopher Herriman, 21 Shagbark Avenue, was present and sworn in.

Mr. Dunn reported that the file contains:

1. affidavit of publication in The Poughkeepsie Journal dated 7/19/06
2. referral from the Planning Board: positive recommendation
3. referral from the Fire Advisory Board: no comment as it is strictly within the purview of the ZBA
4. no list of adjacent property owners as all parcels in the mobile home park are owned by a single owner and are considered to be one lot
5. letter to the ZBA (original on file) from Debbie Cady, office manager of the mobile home park, giving Mr. & Mrs. Herriman permission to build a deck on the front of their mobile home.

Mr. Dunn asked about the size of the deck. Mr. Herriman stated that he does not know the exact dimensions but guessed that it is 4' x 6' or 5' x 8'. He stated that it will hold his grill and himself.

Ms. Rubenstein raised the question of what constitutes the front, given that the lot is triangular and is bordered by roads on 3 sides of the home. The Board clarified that the variances requested are 4.5' from Shagbark and 12.5' from Juniper. Mr. Herriman pointed out the location of his driveway and his front door and stated that they will enter via the deck.

PUBLIC HEARING OPEN

No one spoke.

PUBLIC HEARING CLOSED

2. APPEAL #880 SECOR – VARIANCE

Mr. Dunn noted for the record that this property is located at 2157 Route 44 and is an application for a variance from minimum setback requirements for construction of a garage on the property. Further, he noted that the file contains:

1. affidavit of publication in The Poughkeepsie Journal dated 7/19/06
2. referral from the DC Planning and Development Board: no recommendation as it is a matter of local concern
3. referral from the Planning Board: negative recommendation as the request for the non-conforming setback is not in keeping with the intention of zoning codes for a residential district and recommends that the response from adjacent property owners be weighed when making a decision
4. referral from the Fire Advisory Board: no comment as it is strictly within the purview of the ZBA
5. list of adjacent property owners who have been notified of this public hearing

Mr. Darryl Secor, 2157 Route 44, was present and sworn in. Mr. Secor stated that he wants to build a garage so that he can work on some stuff. He stated that it is a hardship for where it is because of the location of his septic and the topography of his property. He stated that there's nowhere else on his property that he can put the garage.

Mr. Gerstner asked where the septic is located. Mr. Secor pointed it out on the map and stated that it is in the front of the house.

Ms. Rubenstein asked if there is any reason that the applicant could not shrink the pavement a little and move it closer to his own driveway. She took note of how very close it would be to the adjacent property line. Mr. Secor stated that there's just enough room to turn around now.

Mr. Vogt asked if there is any reason he could not put the garage farther back and attached to the house. Mr. Secor stated that there's a shop downstairs and that he does not want to lose the windows in it. Mr. Gerstner stated that the shop looks like it was the original garage. Mr. Secor confirmed that it originally was. Mr. Vogt stated that he was on the ZBA when that original garage was converted.

Mr. Vogt stated that there are sight line issues with the proposed placement of the garage and that it is too close to the property line.

Ms. Czech asked about the size of the pavement area, which she stated looks like there's more than enough room to turn around. Mr. Secor responded that it's 20'.

Ms. Rubenstein asked if there was a site plan approval when the original garage was converted into a shop. Mr. Secor responded that there must have been because he got a

C.O. for it. Ms. Rubenstein stated that she would like to look at that site plan to see what it looks like and to ascertain if it specifies the pavement area. She noted that, if there is a site plan that says he needs X amount of pavement, it cannot be changed.

Again, Mr. Secor stated that he knows it is tight but that it is the only place he can put the garage. Mr. Dunn stated that he could put it next to the house even though he would lose the windows, which location Mr. Vogt stated would gain visibility for the sight distance for the road. Mr. Secor stated that he's not blocking visibility for the road. Mr. Vogt stated that being so close to the road would change the character of the neighborhood.

Ms. Czech asked if he could move it back. Mr. Secor stated that he cannot because of the hills in the back of his property and that there would be no way to access it. Mr. Vogt stated that he could do it, but that he would have to excavate. Mr. Secor stated that he would have to blast because it is all shale.

Ms. Rubenstein asked if there is a possibility of making the garage smaller so that it's not so close to the property line. Mr. Secor stated that he needs 9' per car, that's 18' feet for two cars, and that he needs some room in which to work.

Ms. Czech asked about ingress and egress and parking and whether cars will be coming and going. Mr. Secor stated that he will already be out – that during the day when the business is operating he will already be out.

Ms. Rubenstein asked if the applicant could make the work area a little smaller. She stated that she's trying to figure out a way whereby he can have his garage where he wants it. She explained that it's disturbing to the ZBA when the variance requested virtually eliminates the setback requirement due to the fact that the proposed location of the building is right on the property line. She stated that that is a very hard case to make. Therefore, she asked if there is any way to shrink it without totally losing usability. Mr. Secor stated that all it borders is the neighbor's driveway. Mr. Rubenstein stated that nevertheless it is someone else's property and that he plans to build right on the property line, which is often not welcomed by the neighbor.

Mr. Dunn asked the applicant if he can make the garage smaller. Mr. Secor stated that he would rather not.

With regard to the Planning Board's recommendation to the ZBA, Ms. Rubenstein stated for the record that the ZBA always pays attention to public comment on all appeals and expressed her feelings in response to the Planning Board's recommendation. She stated that the Planning Board's recommendation sounds like they don't know what the ZBA does. She stated that the purpose of the public hearing is exactly that – to take into account public sentiment on all appeals - and is always part of the ZBA procedures. She specifically stated that she did not want the public to think that the only time the ZBA takes the public's comment into account is when the Planning Board recommends it.

PUBLIC HEARING OPEN

Mr. Fred Christiansen, 12 Brett Place (residence), Poughkeepsie, and owner of 2153 Route 44 (which borders the applicant's property), was present and sworn in. He commented that he owns the adjacent property and the driveway. He asked to see the plans. Mr. Gerstner displayed the plans and pointed out the proposed location of the garage. Mr. Christiansen asked about the proposed structure and materials. Mr. Secor stated that it will be pole built and made of metal or vinyl.

Mr. Christiansen stated that he's concerned about the parking and about the traffic. He stated that the traffic is much too fast and exiting his driveway is always challenging. Therefore, he stated that his biggest concern is where cars will be parked and their potential impact on the line of sight. Ms. Rubenstein asked for clarification as the cars are currently parked there now. Mr. Christiansen stated that his concern is for cars that will be parked closer to the road. Mr. Rubenstein stated that she does not think that that is the plan. Mr. Christiansen asked what would stop them from parking on the grass close to the road, which sometimes happens now.

Mr. Christiansen also stated that his concern is for the type of structure, a commercial looking building with commercial siding will impact the area. He stated that this is not a commercial area. He stated that he's not about to put a \$500,000 home on a piece of land adjacent to a commercial property.

Mr. Christiansen stated that, with regard to the setbacks, although the applicant says he can't do it, as a contractor he knows it can be done.

Ms. Rubenstein asked if the garage itself would block the sight line. Mr. Christiansen acknowledged that it would not and that his issue is pulling out from the driveway. He stated that the building is not the issue, but that he would like to see residential siding on it with a nice roof. He reviewed the pictures of the building and stated that it looks like a nice building.

Mr. Dunn asked Mr. Christiansen if there would be snow removal problems with the garage located so close to the property line. Mr. Christiansen responded no, but trees should not be removed. Mr. Secor stated that there are two trees – one's dead and the other is a sucker – that need to come down. Mr. Christiansen stated that he does not have a problem with those two trees coming down. Mr. Christiansen stated that more planning is needed to make sure that nothing is blocking their line of sight and to work with the setback requirements.

Mr. Stanley Olin-Dabrowski, 2155 Route 44, was sworn in. He stated that he has lived there for 17 years and has been the principal residence on that driveway since 1989. He stated that every year pulling out of his driveway has become more and more difficult. He stated that every year there's another challenge. He stated that he would like to see it stay the way it is. He stated that the lay of the land is such with the hill that there are accidents and someone died on that corner. He stated that there's approximately a 2 second window of time to get out of that driveway in ideal sunlit, dry road conditions. He stated that his main concern is for safety and visibility. He stated that for 17 years

pulling out of that driveway, anything more added in their vicinity – they have to cut back the weeds to get adequate line of sight.

Ms. Rubenstein asked if he has seen any of the drawings. Mr. Olin-Dabrowski responded no. Ms. Rubenstein showed him the renderings that were provided to the ZBA regarding where the garage would be located and asked if he thought it would block his line of sight. Mr. Olin-Dabrowski stated that, today, you could probably make it work, but in the future, what comes next. Ms. Rubenstein stated that she really wanted to know from his perspective of someone who drives the driveway and asked him when he starts eyeing the road. Mr. Olin-Dabrowski responded that “all the way down” he’s checking the road. Mr. Vogt stated that just past Tinkertown there’s dip a in the road and cars come out of that valley and there’s a sight issue. Ms. Rubenstein noted that the previous speaker stated that the driveway is raised and therefore the garage would not be an impairment.

Mr. Vogt again asked if the garage would impair the sight line. Mr. Olin-Dabrowski responded yes and stated that it lends itself for other sight blockages – snow banks, cars, whatever. He stated that he’s lived there before when the garage was there and that was a spectacular piece of property, but now it’s just adding more and more and that he does not know where it’s going.

Ms. Rubenstein remembered the procedure - raising a pole to the proposed height of the canopy of the Mobil station on Route 44 - which resolved the question of sight impairment and suggested that there may be a similar process that could be done for this application. Mr. Gerstner stated that the driveway is elevated, that you are stopping 30’ from the end of the drive, and that you can fit 2 cars between the road and the new garage. Ms. Czech asked what would happen if there were cars parked there. Ms. Rubenstein confirmed with the applicant that the doors of the garage will face the pavement and that there will be parking on the pavement. Mr. Gerstner stated that in his opinion the garage does not impair sight onto Route 44 in either direction but that he still has a problem with it because of the setbacks. But as far as vision onto Route 44, Mr. Gerstner stated that he does not think there’s a problem with it.

Mr. Vogt asked the height of the structure. Mr. Secor responded 12’. Mr. Vogt stated that he thinks it will impede sight onto Route 44.

Mr. Dunn asked if there were anyone else from the public who wanted to speak. No one came forward.

Mr. Secor stated that anyone coming down the driveway must stop anyway, that there’s a huge 3’ diameter tree right on the corner, and someone will be able to look right over the top of the garage when sitting in their car at the end of the drive. He stated that there will not be a problem with visibility.

Mr. Vogt stated his preference to have the applicant put up poles at the corners of the structure to visualize the potential sight impairment. Ms. Rubenstein stated her desire to see the original site plan. She noted that the septic is in the front and asked if it were

possible to have parking on the other side of the driveway. Mr. Secor responded that this is not possible due to the leech field. Ms. Czech stated that setting up the poles would clarify the question of sight impairment. Ms. Rubenstein concurred that the poles would resolve the neighbors' concerns of safety and visibility but not the issue of setbacks. And she stated that it's a lot easier to resolve the setback issue if there are no problems with safety and visibility. Ms. Czech stated that reviewing the site plan enables the Board to consider alternatives, which cannot be done without the site plan. Ms. Rubenstein stated that she wants to know how much parking they were required to have, do they have more than they needed, maybe they could shrink their parking and move the garage over. She reiterated her desire to see the site plan.

Mr. Dunn asked Mr. Secor if he would be willing to set up the poles. Mr. Secor responded yes. The Board scheduled a time for this to happen.

Mr. Olin-Dabrowski asked if the garage is constructed would there be some lighting that will block his view and how he could comment on that. Mr. Dunn noted that it is residential and therefore does not have a site plan review process. Ms. Rubenstein suggested that any light would be on the front of the garage and would be shielded by the building. Mr. Vogt stated that most garages have a motion sensor on them. Mr. Secor stated that he's not going to put stadium lighting on the building. Ms. Rubenstein stated that if the ZBA approves it, the question of lighting can be addressed as a condition of approval – that there be typical residential lighting only in the front.

Mr. Dunn noted that the application will be adjourned to the ZBA meeting in August, that there will be some poles up for the Board to look at. Mr. Secor stated that he will put up 12' poles in the center of the structure to mark the peak. Ms. Rubenstein asked him to put up a 8' pole at the corner that is closest to the driveway. Mr. Secor concurred that he would do that.

Mr. Dunn also stated that the site plan will be reviewed and noted that the public portion of the hearing will remain open.

**3. APPEAL #881 – GLOBAL TOWER LLC – SPECIAL USE PERMIT
AND**

4. APPEAL #882 – GLOBAL TOWER LLC – VARIANCE

Mr. Dunn reported that the Special Use Permit is for location of a 175' cellular telephone monopole at 362 Pine Hill Road. He reported that the variance requested is for minimum setback requirement related to the height of the proposal location of that cellular telephone monopole.

Mr. Dunn stated that the file contains:

- affidavit of publication in The Poughkeepsie Journal dated 7/19/06 on both appeals #881 & #882
- referral from the Planning Board: recommends that the ZBA hire a radio frequency expert to validate the need for a second tower, and if validity is proven, the

Planning Board offers a positive recommendation for the proposed construction/location of the monopole.

- Referral from the Fire Advisory Board: no comment but suggests as a condition of site plan approval that provisions be made for access by the Fire Department to the facility in case of an emergency.
- List of adjacent property owners

Mr. Dunn and Ms. Rubenstein reviewed a letter that is not notarized and determined that it is not an evidentiary letter but rather requests that the ZBA adjourn this hearing. Ms. Rubenstein stated that the ZBA cannot adjourn this hearing tonight but asked that the Planning Office notify the writer of the next meeting. She noted that notice is a huge issue because, since the first tower went up in that area, there have been a lot of people who have come to the ZBA who said they didn't know a cell tower was being constructed. She underscored that notice is an issue and expressed her concern that people get adequate notice.

Mr. Neil Alexander, attorney for Global Tower, was present and as an officer of the court was not sworn in. Also, Mr. John Mackey, property owner, and Mr. Yvan Joseph, radio frequency engineer with Nextel Communications, were also present.

Mr. Alexander reported that the existing site has a long history and that the original tower was approved to 194'. He stated that the tower is now full with Sprint, Cellular One, Verizon, Omnipoint, and the Town's emergency communications network. He stated that Nextel and Singular want to develop another pole on the property, which Mr. Mackey has leased to Global Tower Properties. He stated that Global Tower Properties is not a wireless operator but is an owner and operator of infrastructure.

Ms. Rubenstein clarified the height of the tower, which Mr. Alexander said is 194' as was approved. She asked who the owner was at the time that the tower was approved. Mr. Alexander stated that it was Cellular One or its predecessor. He stated that Global Tower, the current owner, is not FCC licensed for operating, however Nextel is FCC licensed. Further, he stated that Nextel will demonstrate the need to be at 175' on a new pole. Ms. Rubenstein asked about the business affiliation between Global and Nextel. Mr. Alexander stated that they have an agreement that Nextel will locate on the tower that is owned by Global Tower Properties.

Mr. Alexander stated that Singular did get approval to locate at 145' on the existing tower in January 2005, which they did not exercise because there was a lot of concern for the structure. He stated that the existing tower is maxed out with a lot of public safety communication equipment. Ms. Rubenstein asked if there is documentation in the application from an engineer that states that the existing tower is full. Mr. Alexander stated that this will be provided going forward.

Mr. Vogt asked about the option of taking the existing pole down and building a tower that will meet the needs of all the companies.

Ms. Rubenstein asked when the original tower was approved. Mr. Alexander guessed that it was 1997. Ms. Rubenstein stated that there are 3 members on the Board currently who were on the Board when the original tower was approved. She noted that there are people on this Board who have never been through a SEQRA determination process and she's concerned that people understand the process and asked if it would be a coordinated review or an uncoordinated review.

Mr. Alexander responded that for the Special Use Permit approval he will have to show the Board that the need exists. He stated that in his opinion the variance application is ancillary because one was granted for the original pole and the proposed pole is 10' further away. Further, he stated that there's not much to the site plan, that it's a 39' x 39' compound that is fenced and is in the middle of nowhere. And he stated that there will be two equipment shelters that are 12' x 25' and 9' tall that no one will see. He stated that the site plan review will be minimal and, therefore, he thinks the ZBA should be lead agency and the Planning Board to be an interested involved party. He requested that the ZBA jump start that by circulating the intention for ZBA to be lead agency.

Ms. Rubenstein asked Mr. Alexander if he had a resolution for the Board. He stated that he does not. Ms. Rubenstein stated that without a resolution the Board cannot act on lead agency tonight. Mr. Alexander stated that he understands that, assuming the ZBA is lead agency, they would complete the SEQRA review with the ZBA, and if they received a negative declaration they would then go to the Planning Board. He noted that they cannot do anything with the Planning Board until SEQRA determination is complete.

Mr. Alexander stated that they previously used Mark Hutchins as a wireless consultant for the Strain property tower that was approved for Sprint and was never built. He stated that Mr. Hutchins is working in the Town of Clinton at this time and reviewing an application for Nextel up there.

Ms. Rubenstein stated that, for the next meeting, the ZBA needs to ask their attorney for a recommendation to circulate to be lead agency and needs to contact Mr. Hutchins. She stated that procedural issues are being dealt with tonight and that the ZBA may need to hire an engineer to evaluate the project. Mr. Alexander provided Mark Hutchins e-mail address: mark@hutchins.com.

Mr. Vogt stated that the ZBA is charged with co-locating on other existing structures. Mr. Alexander stated that they will go through that and referenced Exhibit E, List of Surrounding Sites. He stated that with the existing 194' lattice tower on the property there already is a major visual intrusion. Mr. Vogt stated that the proposed new tower will add to that visual impact because of multiple panels off the monopole.

Ms. Rubenstein stated that the ZBA will declare itself lead agency which means that this Board will be the lead agency in the review process and will invite the other agencies to participate. She stated that the Planning Board is not concerned with the same issues that the ZBA is concerned with. She stated that the ZBA will contact the attorney and get approval from Mr. Battistoni to contact Morris Associates. She stated that the ZBA

needs Morris Associates to review what has been presented to the Board and help get to the next step. She noted that the EAF claims that there is no visual impact, which probably the ZBA does not agree with.

Mr. Rubenstein stated that, with Mr. Dunn's approval (which was granted), she will contact Mr. Volkman, with Mr. Battistoni's approval she will contact Morris Associates, and she will contact Mark Hutchins. She stated that the escrow amount will have to be determined and that the ZBA will declare itself lead agency at the next meeting.

Mr. Alexander stated that they will respond to a proposed escrow amount. He stated that his client wants to know what the Board needs and wants in order to respond effectively. He stated that the industry's perspective is that there already exists a big tower and putting in a smaller tower will not have as much of an impact as finding a new raw site would have.

Ms. Rubenstein requested that Mr. Alexander provide a resolution for Mr. Volkman's review.

Ms. Rubenstein stated that the Board needs confirmation that the list of required permits is correct. Mr. Vogt will ask Mr. Friedrichson to verify that the list of permits needed for this application is correctly listed in the application.

Mr. Dunn will call Mr. Battistoni to alert him to the fact that Ms. Rubenstein will be contacting Morris Associates and Mark Hutchins. Ms. Rubenstein stated that Mr. Volkman, Mr. Setaro, and Mr. Hutchins each need a copy of the complete application. Mr. Alexander stated that a decision needs to be made on whether Nextel's radio frequency engineer or an independent engineer will be used.

Ms. Rubenstein asked how to proceed on detecting visual impact. Mr. Alexander recommended that the consultants advise the Board and stated that the best way to do the visual is view the USGS quad map for the area and pick public places for view points. Ms. Rubenstein, Mr. Vogt, and Mr. Dunn agreed that they know where the view points area. Mr. Alexander stated that the proposed tower is 19' shorter, which may help, and stated that it won't have the girth of the existing tower.

Ms. Rubenstein stated that it is very important to expand the notice to the wider community but that she does not remember who was included in notice for the original tower. Mr. Alexander suggested that the visuals be done first in order to get a sense of whom to notify. Ms. Rubenstein stated that she would like the Board to be proactive in providing notice to the public. She noted that the existing tower can be seen from everywhere.

Ms. Czech stated that the application is confusing because the submitted list of existing sites does not include the 194' tower. Mr. Alexander explained that the list is of existing Nextel sites and that Nextel is not on the 194' tower. Ms. Czech stated that it's somewhat deceiving because it does not list the tower that already exists.

Ms. Rubenstein stated that the only issue will be visual impact.

Ms. Czech asked if there is any negative health impact from being located near one of these towers. Ms. Rubenstein stated that the ZBA can ask the engineer about this. Mr. Alexander explained that when the Federal government enacted the Telecommunications Act in 1996 it pre-empted certain areas of investigation. Further, he stated that all issues with regard to health and safety were standardized under that Act and any applicant must prove compliance with these standards. He stated that the FCC and EPA put out a report that defined the calculations used to prove compliance with the health and safety regulations for radio frequency. He stated that the applicant will have to submit to the ZBA proof of compliance. Ms. Czech expressed her concern for the cumulative effect from adding an additional tower and stated that people in the area will also be concerned. Mr. Alexander explained that the limitations set by regulation remain the same regardless of how many telecom companies are on the pole or are added to the pole.

Ms. Rubenstein suggested that the consultants talk with the ZBA before they do a lot of work so that they can hear and address the Board's concerns.

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DISCUSSION

1. APPEAL #879 – HERRIMAN – VARIANCE

Ms. Rubenstein read into the record the worksheet for this application (original on file).

- Benefit to the applicant is greater because: it is consistent with what is already in the neighborhood (the mobile home park); there is a fair amount of space on the lot for the deck; and the design of the lot fosters the need for the variance.

Ms. Rubenstein: **RESOLUTION TO GRANT VARIANCE BASED UPON THE WORKSHEET**

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 6-0-0

2. EXECUTIVE SESSION

Ms. Rubenstein: **MOTION TO GO INTO EXECUTIVE SESSION TO DISCUSS TWO ITEMS OF LITIGATION**

RETURN FROM EXECUTIVE SESSION

Board reached agreement that the stipulation of settlement regarding Stellini be adopted.

Board reached agreement that the stipulation of settlement regarding the Blumen Barn not be adopted.

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:40 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the July 27, 2006, 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
August 24, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on August 24, 2006, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:40 p.m.

Members present: John Dunn
 Tim Gerstner
 Ronald Vogt
 Rob Maucher
 Lisa Rubenstein
 Christina Perkins
 Don Sagliano, Alternate

Members absent: Helene Czech

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #880 – SECOR VARIANCE

Mr. Dunn stated for the record that this property is located at 2357 Route 44 and the appeal is for a variance from minimum setback requirements for the location/construction of a garage on parcel. Further, he noted that this application was adjourned from the July 2006 ZBA meeting. Mr. Dunn noted that Mr. Secor is present at the meeting.

Ms. Rubenstein stated for the record that the members of the ZBA did a site visit to view the proposed location of the garage.

Mr. Vogt remembered that the ZBA had wanted to review the number of parking spaces that were required when the original garage was converted into a shop and whether that would affect the current application. Ms. Rubenstein stated that the question of parking spaces pertained to whether the location of the proposed garage would impinge on anything that had been approved on the original site plan. Further, she noted that this is no longer her most relevant concern regarding the current application. Mr. Vogt agreed.

Mr. Secor stated that the Zoning secretary told him that there is no site plan for the original conversion. Ms. Rubenstein stated that this is curious because generally the ZBA would have referred such an application (to convert the garage) to the Planning Board for site plan review.

PUBLIC PORTION OF THE HEARING WAS CLOSED

2. APPEAL #881 GLOBAL TOWER LLC – SPECIAL USE PERMIT & APPEAL #882 – GLOBAL TOWER LLC – VARIANCE

Mr. Dunn asked Mr. Neil Alexander, attorney for Global Tower, if he had received correspondence from Mr. Setaro and Mr. Volkman. Mr. Alexander responded that he has not received anything. Mr. Alexander reported that he attempted to schedule a meeting with them before this ZBA meeting but it did not happen even though there were some phone calls that went back and forth. He stated that he sent them the draft notice of circulation for their review and edit.

Ms. Rubenstein reviewed a letter that she received from Mr. Setaro. She noted that Mr. Setaro reviewed the application and suggested some changes that need to be made before circulating for lead agency. She stated that Mr. Setaro put her in touch with Mark Hutchins who is happy to serve as the consultant on the project. She stated that Mr. Hutchins does not have a lot of input yet. She stated that before the ZBA makes a determination on whether to permit the tower to be installed, the Board must review the environmental impact and make a determination of significance. She stated that the reason the ZBA must circulate properly and declare its intention to be lead agency is because no other agency or board can do anything until the ZBA issues its environmental findings. She noted that once the ZBA is lead agency, the ZBA is in charge. She explained that it is usually the agency that has the most significant permission to grant that becomes the lead agency on a matter. She stated that the Planning Board will review the site for planning issues, that it's a location issue for the Planning Board whereas it's a permission issue for the ZBA. Among the items that the ZBA will consider is whether the second tower is really needed and whether is the height appropriate. She noted that the Telecommunications Act supercedes a lot of issues that the ZBA might consider, but that the ZBA is permitted to consider potential impact.

Ms. Rubenstein stated that Mr. Hutchins, a frequency engineer, will review the project and tell the ZBA whether this coverage is really required. She stated that his opinion may differ regarding height of tower, and some other details, etc. She also noted that Mr. Hutchins's review is not required prior to the ZBA circulating for lead agency.

Ms. Rubenstein reported that Mr. Setaro suggested some changes and suggested that the ZBA wait until those changes are made and circulate for lead agency at the next ZBA meeting. She noted that it has been a difficult time because a lot of people are on vacation but is pleased that Mr. Setaro was able to review the application prior to tonight's meeting. Ms. Rubenstein stated that she will inform Board members via e-mail about the status of this application.

Ms. Rubenstein stated that there are two things that can be done tonight. She stated that Morris Associates submitted an estimate of what they thought would be appropriate for escrow and that Mr. Hutchins also submitted an estimate. Mr. Dunn suggested a total of \$5,000 for escrow. Ms. Rubenstein asked Mr. Alexander if that amount is OK. Mr. Alexander stated that it is fine.

Ms. Rubenstein: **MOTION TO HIRE MARK HUTCHINS TO BE A CONSULTANT ON THIS PROJECT AS A FREQUENCY ENGINEER; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED UNANIMOUSLY.**

Ms. Rubenstein stated that she will notify Mr. Hutchins via e-mail that the ZBA has authorized that he be hired. Mr. Alexander will send him a complete package and asked if their frequency engineer can coordinate directly with Mr. Hutchins. The Board responded yes.

Mr. Alexander stated that Mr. Hutchins usually builds his own computer model to verify their computer model. Further, he noted that Mr. Hutchins is uniquely situated compared to any other consultant because of his knowledge of the area – specifically he's reviewing one near Clinton Hollow. Mr. Alexander pointed out that Mr. Hutchins knows the area – the police barracks to the east and Timothy Heights to the left and what's south in Lagrange. He stated that Mr. Hutchins will review the proposed height of the installation, what direction the antennas shoot, and will do his own computer model to report on what he would do if he were the designer.

Ms. Rubenstein suggested that Mr. Setaro may wish to be copied on these communications. Mr. Alexander stated that the most important thing to his client is to expedite the dialogue substantively and noted that he will copy Mr. Setaro on all correspondence. Ms. Rubenstein will notify Mr. Hutchins via e-mail that the ZBA has approved hiring him, that Mr. Alexander will communicate directly with him, and that the ZBA does not need to be copied on all the correspondence unless he feels the ZBA needs to be informed.

Mr. Alexander suggested that at the next ZBA meeting they review the USGS quad map and the old Cell One studies and decide where the Board wants do the balloon tests and agree to a date. Ms. Rubenstein stated that it is preferable to notify the adjacent property owners of the date of the test. Mr. Vogt suggested that they notify them via certified mail, although it is not required. Ms. Rubenstein asked whether they want to notify more than the adjacent property owners, knowing that in times past other property owners have protested that they were not notified. Mr. Alexander stated that it's OK with him whomever the Board chooses to notify and noted that he really wants to establish at the next Board meeting the date for the test. Ms. Rubenstein asked that, before the next meeting, he give the Board a list of suggested locations for the test, which the Board members can drive by prior to the meeting.

Mr. Alexander asked if it is too early in the process to do the 239M review. The Board concurred that it is too early. Mr. Alexander confirmed that he will make the necessary changes to the long form EAF.

Mr. Dunn suggested that there is no need for a height variance because the proposed tower will be below the FAA 200' regulation. Mr. Alexander stated that this was the substance of his conversation with Linda and that they came to the conclusion that if the ZBA were to circulate for lead agency tonight then they would include the height variance. He noted that it is the Zoning Administrator's decision. Ms. Rubenstein stated that the Board will not be making any decisions until they talk to her. Mr. Alexander stated that the Rosenberg standard is applied – is there a need and is the intrusion

minimal in the community. He noted that it is really a paper chase because the special permit criteria and the area variance criteria for a wireless carrier – a public utility – are almost identical. Mr. Dunn will confer with Linda about the necessity for a height variance.

Board discussed with Mr. Alexander potential dates for the balloon tests in late September or October – taking note of the Columbus Day holiday and Board members' vacation plans.

Mr. Dunn: **MOTION TO ADJOURN THIS APPEAL TO THE NEXT ZBA MEETING; SECONDED BY L. RUBENSTEIN; VOTE TAKEN AND APPROVED 7-0-0**

DISCUSSION

1. APPEAL #880 – SECOR VARIANCE

Ms. Rubenstein stated that she is troubled because a structure that is fairly large is proposed to be located one foot off the property line. She did a site visit and appreciates the neighbors' concern about visual impact and a closed-in feeling as you come down the driveway. She stated that she agrees that anything parked in front of the garage will become a problem. She's also concerned about the parking area that is designated for the hair salon and wonders if some patrons will park in front of the garage and, therefore, it is a safety problem all around.

Mr. Vogt agreed that it is a substantial structure and noted that the original garage was converted into a hair salon and now there is a proposal for essentially a replacement garage. He stated that locating the garage that close to the property line will mean that any repairs to the structure will have to be done from within the neighbor's property. Further, he stated that in his opinion it will change the character of the neighborhood; it will change the visuals of that portion of the roadway.

Mr. Dunn noted that the applicant has other options, i.e. moving closer to the house, a smaller garage, coming off the side of the house, and other options. He pointed out that there are other options that do not require any variance.

Mr. Vogt agreed that the variance from the center of the road is substantial. Mr. Dunn stated that a 25' variance is needed in the front and 13' on the side. Mr. Vogt questioned whether the height also requires a variance depending on the style of the roof – therefore the side variance is a minimum of 13'.

Ms. Perkins read into the record the worksheet – original on file: the detriment to the health, safety, and welfare of the neighborhood or community outweighs the benefit to the applicant due to the visual effects from the roadway and therefore the above factors balance in favor of denying the variance. **Ms. Rubenstein stated that the decision to deny should be done via a proper resolution.**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 8:50 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the August 24, 2006, 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
September 28, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on September 28, 2006, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:34 p.m.

Members present: John Dunn
 Tim Gerstner
 Ronald Vogt
 Rob Maucher
 Lisa Rubenstein
 Christina Perkins
 Helene Czech
 Don Sagliano, Alternate

Also present: Dieter Friedrichson, Zoning Administrator

- 1. APPEAL #881 GLOBAL TOWER LLC – SPECIAL USE PERMIT**
- 2. APPEAL #882 GLOBAL TOWER LLC – VARIANCE**

Mr. Neil Alexander, attorney, was present.

Mr. Dunn announced that the Public Hearing is still open.

Ms. Rubenstein stated that she has confirmed that Global Tower LLC has provided the escrow money to the Town. She reported that Mark Hutchins, radio frequency engineer, is on board, that she has been e-mailing him, that he does not have any input yet. Mr. Alexander reported that Mr. Hutchins has received all updated information. Ms. Rubenstein stated that Mr. Setaro has reviewed the application and notified the Board members that they have received an updated EAF dated 9/14/06 and can discard the original EAF.

Ms. Rubenstein reported that that this Board will be Lead Agency on this application as the ZBA has the most significant permit to issue without which the applicant cannot go forward. She reported that the procedure for becoming Lead Agency is to circulate on notice to the other involved agency – the Planning Board – stating that the ZBA intends to be Lead Agency and requesting their affirmative or negative response within 30 days. She stated that the ZBA will automatically become Lead Agency if the Planning Board does not respond within that time period.

Ms. Rubenstein stated that the next steps at the next ZBA meeting are to declare as Lead Agency, to receive input from Mr. Setaro and Mr. Hutchins, to report to the applicant on next steps. She explained the EIS process and described that an Unlisted Action means that the ZBA has discretion to require an Environmental Impact Statement. She explained that the applicant would prefer that they satisfy all the issues that the ZBA has

and that the Board would issue a Negative Declaration on the project stating that there is no significant environmental impact as a result of this project. She explained that the ZBA has to make a determination of significance before the Board can issue any permits.

Ms. Rubenstein stated that the ZBA has some issues and concerns that the applicant will need to address but stated that the Board needs input and recommendations from Mr. Setaro and Mr. Hutchins before raising those issues. She suggested that the ZBA may wish to schedule a special meeting to address this project as the discussion will be time consuming.

Mr. Alexander stated that he's in agreement with the next steps as outlined by Ms. Rubenstein and requested that the ZBA schedule the balloon float on 10/21/06. He suggested that they use the same locations for this balloon float as were used for the original tower. He stated that the revised EAF dated 9/14/06 includes certification of the latitude and longitude of the location of the proposed tower and certification that it will not need to be lighted. Mr. Dunn asked the source of that certification. Mr. Alexander stated that it comes from the FCC and FAA website and is Exhibit A attached to the EAF. He reviewed the Exhibits to the EAF.

Mr. Alexander stated that he will be submitting the documents from the US Fish and Wildlife Survey, NYS DEC Natural Heritage Program, and SHIPO – all of which have signed off on this project. He stated that he has had correspondence back and forth with Mark Hutchins which culminated in providing additional material to Yvan Joseph including a list of all their site locations in the surrounding area, the azimuth, the height, whether they are down hill or up hill – all the rudimentary aspects – and their search ring. He stated that all of this information is used to model and confirm the need for the 175' proposed tower.

With regard to easements, Mr. Alexander stated that Mr. Mackey provided them with copies of the Iroquois Gas easement and the existing easement for the access road. He stated that he will provide copies of these to the ZBA. He stated that the height issue has been solved. Mr. Dunn stated that Linda's letter recommended that the ZBA get an approval letter from FAA stating that the construction as proposed does not require any markings or lighting to provide proof satisfactory to the Town engineer. Mr. Alexander stated that he spoke with Linda and that he cannot get an actual letter from the FAA. He stated that the whole point is that they don't want to get every tower filed, that the Tow Air report provides proof that they don't need to file. Mr. Dunn asked if Linda was OK with that. Mr. Alexander stated that so far she has not objected.

Mr. Alexander stated that he wants to confirm with the ZBA tonight the locations for the balloon test and whether the Board wants to suggest locations different from or in addition to the ones used for the original tower. He referred the Board members to Exhibit E which depicts these original locations. He stated that there are 12 different viewpoints going all the way up across Salt Point Turnpike and into Hyde Park. He noted there are a couple of viewpoints from the Taconic Parkway. Mr. Vogt suggested a viewpoint at the top of the orchard at 761 North Avenue at Rymph Road. Ms.

Rubenstein and Mr. Vogt concur that you can see the tower from everywhere. However, Mr. Vogt stated that it is most visible in the northern quadrant and that there are few viewpoints in that area.

Board and Mr. Alexander discussed possible dates for the balloon dates and settled on 10/14/06, if Mr. Alexander can clear his scheduled, or 11/11/06 if he cannot.

Board discussed who and how to notify about the balloon float. Ms. Rubenstein stated that placing it in Legal Notices in The Poughkeepsie Journal is not an effective method for notifying the public as few people read those notices. Further, she stated that, if notice is mailed to only the adjacent property owners, they are not the ones who are most affected because they cannot usually see the tower as compared to the population who lives in other areas of the Town where there is a huge visual impact. Therefore, she stated and Mr. Vogt agreed that mailing the notice is not adequate. Mr. Alexander stated that they will follow the requirements in the Code for mailing and notification. Mr. Vogt offered and the Board accepted his offer to contact the newspaper about placing notification in the paper. Mr. Alexander stated that they will also notify anyone else the Board wants them to notify. Mr. Vogt agreed to post notices in the library and the Post Office. Ms. Rubenstein stated that it will be posted in the Town Hall. All efforts will be made to notify the public of the balloon test.

Mr. Alexander explained that the test must start early – usually 7:30 – 8 a.m. - because of the wind. He stated that as the wind picks up velocity later in the day it affects the accuracy of the float. He stated that the computer model can correct for the affect of the wind, but that the people driving around town won't see it accurately.

Board and Mr. Alexander discussed the process for viewing the float. Ms. Rubenstein recalled that for the original float they met at the bottom of the driveway and went up and came back down and then individually drove wherever we wanted to drive to view the balloon. Ms. Rubenstein suggested that the Board follow the same process for this test – to meet at the site as a group.

Board and Mr. Alexander agreed to start the float at 8 a.m. weather permitting on 10/14/06 with a weather/wind date of 10/15/06. He stated that if that date does not work, the alternate date will be 11/11/06 with a weather/wind date of 11/12/06.

Ms. Rubenstein asked if Mr. Hutchins has been in touch with Mr. Joseph. Mr. Alexander confirmed that he has and that Mr. Setaro has been copied on those messages. Ms. Rubenstein stated that Mr. Hutchins has requested copies of all of the ZBA minutes pertaining to this application and that Ms. Salvato is sending them to him. She stated that he needs to know the Board's concerns. She stated that he prefers to copy someone in the town on his e-mails with the frequency engineer but that there is no one who can receive these copies via e-mail. She stated that this has been resolved by Mr. Hutchins' keeping copies of all the e-mails between the engineers and that these are available at any time. Mr. Alexander stated that he has copies of all of his exchanges with him. Ms. Rubenstein

stated that the ZBA does not need these copies at this time but noted that they are accessible to the Board members at any time and can be included as part of the record.

Mr. Dunn: **RESOLUTION FOR SEQR UNLISTED ACTION AND FOR LEAD AGENCY – original on file**

SECONDED BY C. PERKINS

VOTE TAKEN AND APPROVED 7-0-0

Mr. Randall Gregg Paulk, 191 Barkit Kennel Road, Pleasant Valley, NY was sworn in. Mr. Paulk stated that he was present at the meetings regarding the original tower. He asked if the proposed tower will be in addition to the existing tower or will it be a replacement. Mr. Dunn responded that it is a second tower. Mr. Paulk noted that, if that tower were to come down, the variances would allow it to fall on his property. He also noted that he was the only person notified regarding the original tower. Mr. Paulk stated that the balloon float is intended for the public to see the impact of the proposed tower. Ms. Rubenstein advised him that he will receive a notice. Mr. Paulk recalled that it was standing room only last time.

Mr. Paulk stated that he's the IT manager at The Anderson School, that he tests cellular services for the school, that cell service is very important to the school and is, in fact, a necessity. He stated that there is enough cell service in the town, that a second cell tower will only serve to increase the profits of the company. He stated that the company is trying to resell their space to additional vendors – Cell One, Sprint, Verizon, Nextel. He stated that he knows this because he used to work in the cellular business. He stated that the Town does not need another cell site. He stated that for the school 6-8 months ago he tested the signal strength with Nextel cellular and Sprint cellular at his house and he had no problems getting calls out. He stated, therefore, that he does not know what the purpose of the additional tower would be except to sell more band width to more vendors to increase their profits.

Mr. Paulk asked if there would be a public hearing following the balloon float for the public to voice their opinions and be heard. Mr. Dunn responded that the public portion of the hearing will remain open.

Ms. Rubenstein explained that the ZBA issues a Special Use Permit and noted that much of the ZBA's authority is preempted by the Federal Telecommunications Act. She stated that the only major issue that the ZBA has the ability to consider is the visual impact. Therefore, she noted that that is the reason for the balloon test. She stated that after the balloon test there will be an opportunity to determine whether all of the concerns have been answered. She noted that there will be a public hearing where the public will have the chance to comment. She stated her hope that the public does not think they need to come to every ZBA meeting and state their opposition to the project. She stated that it will get discouraging if at every ZBA meeting there are hours of repetitious public comment that leads people to think that the ZBA is not listening to them, when in fact

there will be an opportunity that will be advertised again where the public will give their comments. She also noted that it is a good idea for the public to attend the meetings to learn what's going on, but it will not be necessary to comment at each meeting. She explained that the ZBA meeting is always a public meeting, there's always comment, but that Mr. Paulk does not need to come every time to express his thoughts on the project.

Mr. Paulk stated that he missed the first two meetings because he was out of town and stated that he sent a letter to the first meeting. Ms. Rubenstein assured him that he will receive a notice of the balloon test and can check with Ms. Salvato for when it is on the agenda. She noted that if the balloon test is held in November, the appeal will not be on the October meeting agenda. Mr. Alexander agreed that there is no reason to put it on the October agenda.

Ms. Rubenstein also assured Mr. Paulk that he can come to Town Hall and review the file and all the submitted materials. She stated that after the balloon test and after the ZBA has received the submissions from the frequency engineer there will be a meeting where everyone's comments will be very important.

Mr. Paulk stated there is no need for an additional cell tower. He stated that he knows Floyd Patterson, senior vice president of engineering for Cellular One, and that he can get a study from Mr. Patterson to validate that the existing tower can accommodate all four carriers, provided that they would make the adjustments to the cell antennas themselves. He stated that he will work on getting that statement from Mr. Patterson in time for the special meeting. He reiterated that he is definitely opposed to the variance from required setbacks because if that tower comes down it will fall on his property. He stated that he has 11 acres and that he has not started development of it. He stated that the towers are adjacent to the only two areas in his lots where he can build. Therefore, he stated that the existing tower and the proposed tower decrease his property values and encroach on his potential house sites.

Mr. Alexander expressed his appreciation to Mr. Paulk for his thoughtful comments and his respectful approach to the subject. He stated that he is especially appreciative of Mr. Paulk's respectful tone as it may be a predictor of high quality dialogue going forward.

Mr. Alexander responded to the issue of the tower falling on Mr. Paulk's property. He noted that the proposed tower is planned to be farther away from the property line than that existing tower and noted that it is shorter. He acknowledged that they will need a variance from minimum setback requirements and that they will talk about the structural reinforcement and how the tower can be designed to collapse.

Mr. Alexander made some corrections to the statements made about the law. He stated that under the Telecommunications Act each carrier needs to be able to provide service and no one carrier can block out other providers. He stated that the point of the Act is to create competition for the end user.

Ms. Rubenstein asked Mr. Paulk if he has made a site visit and seen the proposed location of the new tower. Mr. Paulk asked if work as begun on the site. Mr. Mackey stated that there are some stakes in the ground. Ms. Rubenstein suggested that perhaps Mr. Paulk could arrange with Mr. Mackey to do a site visit. Mr. Alexander stated that the proposed tower will be 30' to the northwest of the existing tower and is planned to be 175' tall. Mr. Paulk stated that means 113' that will come down on his property. Mr. Alexander stated that the tower will be designed to an 85 mph wind standard and if that tower comes down, every other roof in the area will be blowing around.

Mr. Bruce Cookingham, 50 Fox Run, Salt Point, NY stated that he does not want to argue with anyone but he came to the meeting to tell the ZBA how his cell phone works in the area. He stated that he has Nextel service and that he uses it for business. He stated that from the Quaker Lane and Netherwoods Road intersection to his house on Fox Run – no service - from Glen Daley's house on Salt Point Turnpike to Tommy Hamm's – no service - from Matt's Autobody to Dutchess Quarry, from Route 44 Troop K to Audia Chervrolet in Amenia – no service. He stated that the Town certainly needs better service or he's being ripped off when he pays \$80 a month for service. He stated that there is something wrong and that this is his independent survey because he uses his cell phone everyday of the week. He stated that people are welcome to come to his house on Fox Run, he lives on the hill and can look over and see the tower.

Mr. Gerstner asked about a bond for removal in the event that satellite were to take over providing service. Ms. Rubenstein stated that it is covered in the Code. Mr. Alexander stated that Mr. Setaro will set a bond amount for the cost of construction and the cost of removal.

Mr. Dunn stated that the Public Portion of this application will remain open.

3. APPEAL #883 BUDD – VARIANCE

Mr. Dunn reported that this appeal, property at 2 Hibernia Road, is for a use variance to allow residential use in a commercial zoned district. He noted that the file contains:

- Comment letter from the Fire Advisory Board: no comment as it represents no fire or safety issues
- Affidavit of publication in The Poughkeepsie Journal dated 9/21/06
- Application for a Building Permit that has been denied
- List of adjacent property owners
- Letter from Zoning Administrator, Mr. Friedrichson
- Letter from Dutchess County Department of Planning and Development: “the requested use variance does not appear to prove unnecessary hardship as called for by the State law of New York. State law requires that the applicant must prove all 4 of the following factors: (1) that the property is incapable of earning a reasonable return on initial investment; (2) that the property is affected by unique or at least highly uncommon circumstances; (3) that the variance if granted will not alter the essential character of the neighborhood; (4) that the hardship is not self-created.” The Dutchess County DPD referred this application to the ZBA as

a matter of local concern and recommends that the ZBA rely on its own study of the facts in the case with consideration of the above comments.

- Notarized letter dated 8/1/06 from Charles and Hilda Budd giving Donna VanLeuven permission to represent them in obtaining a Special Use Permit for the property at 2 Hibernia Road.

Ms. Rubenstein noted that it is an appeal for a Use Variance not a Special Use Permit. Mr. Dunn concurred with this observation. Mr. Dunn stated that he assumes the Board members have seen the property. Mr. Vogt stated that he has seen it numerous times!

Ms. Donna VanLeuven, the Budds' daughter, was sworn in. Ms. VanLeuven stated that she has lived in the house for quite a few years, that is has always been a home. She stated that she spoke with Mr. Friedrichson and explained that because it has not been lived in for a year it has reverted to commercial. She stated that the house was built before the Zoning Code and it has only ever been a house and has always been used as a home. She explained that there is still a mortgage against it, therefore there is a hardship because the mortgage is being paid without any money coming in. She explained that her brother wants to move home. She explained that he was in an accident which required him to move out of the house, but that he is now capable of moving home and he wants to do so.

Ms. VanLeuven stated that it's a house, it's never been used as a commercial property, and it should be grandfathered because it was there before zoning. She stated that it is a home. Mr. Dunn explained that DC Dept. of Planning and Development submitted their comments regarding the 4 tests that the property has to meet in order to really be considered an unnecessary hardship and their recommendation that it is a matter of local concern. He explained that it is up to the ZBA to decide on the appeal.

Ms. Rubenstein asked how much the mortgage is. Ms. VanLeuven stated that she does not know.

Ms. Rubenstein explained that the problem the ZBA is faced with is that the Statute dictates that for the ZBA to grant a Use Variance the ZBA must have dollars and cents proof that it cannot be used as a commercial property. She stated that she thinks everyone on the Board is sympathetic to the family's situation, but the Board's problem is if it grants this Use Variance and does not require the necessary proof to be established, then it sets the precedent for other similar appeals. She stated that the Board ignores the Statute at its peril.

Ms. Dunn stated that the property was unoccupied because the occupant was in rehab, and that in his opinion this is a special circumstance. Ms. Rubenstein asked if during his time in rehab the property remained his residential address. Ms. VanLeuven stated that that is where he lived when he had the accident. She stated that the accident happened in 2002. She explained that when the accident happened they were building a new home which they moved into 4 months later and the original house became vacant. She explained that her brother could not yet move back to the original house because he was

not able to live on his own. Mr. Dunn stated that he views that as special circumstances. Ms. Rubenstein stated that she agrees with Mr. Dunn but noted that the Board must be careful that if it adopts a resolution approving the Use Variance that it is very carefully addressed because the ZBA has precedence.

Mr. Gerstner stated that he thinks it can be carefully worded to record that it has been his legal residence. Ms. Czech asked if it was his legal residence. Ms. VanLeuven stated that it was and noted that his mail comes to her because there is no mailbox.

Mr. Dunn asked how much of an inconvenience it would be for Ms. VanLeuven to come back to the ZBA meeting next month and provide the Board with the mortgage figures. Ms. VanLeuven responded that she can do that, that she would have brought that data this month if she had known to do so. Mr. Dunn stated that the Board is very sympathetic to her family's situation, that he does not see a problem, but that it would put her and the Board on a firmer footing if they received documentation of the existing mortgage.

Ms. Rubenstein stated, however, that the Statute requires documentation that the property cannot be used as a commercial property, that there's no possible way of making a reasonable return. She suggested that a possible better approach would be to interpret that section of the Code that says the property loses its non-conforming use if it is unused for a year. She suggested that a better way is to say that what we're really finding is rather than granting a Use Variance we will convert this to an interpretation and that the interpretation is that because he was injured in an accident then technically he would have still been residing there if he had been able. Mr. Gerstner asked if his furniture is still in place and if they kept the heat, electric, and water turned on. Ms. VanLeuven stated that, no, the furniture is out but that everything is still on. Mr. Vogt stated that it's been an empty structure for a number of years.

Ms. Rubenstein stated that technically Ms. VanLeuven coming back with the mortgage figures is not worth her time because that is not what has to be shown. She stated that what has to be shown is a real estate agent coming to the Board saying that no one will buy that for commercial property so, therefore, you cannot get a reasonable return on it.

Ms. Rubenstein stated that there are two ways to go: (1) stretching it a little bit to say that technically it was not vacant, except that it was; (2) or Ms. VanLeuven gets a letter from a real estate broker that says no one will buy this property because it is completely unsuitable for commercial use. She stated that that would bring the Board to a point where it can say, OK, you have established that no one can use the property as a commercial property and therefore it can be used as residential. She noted that a Use Variance changes the zoning, which therefore would make that one lot residential. She stated that the Board needs to think about the permutations of such a move in a C-1 zone, which puts the Town in a weird situation with one residential lot in the middle of a C-1 zone.

Mr. Dunn stated that it isn't like the ZBA is inventing something because the lot was always residential and but for the accident it would still be residential. Ms. Rubenstein

stated that she thinks the ZBA has the authority to determine that this is not really a variance but rather is an interpretation and to make the interpretation that it was not vacant for a year. She stated that the variance that would be granted would say that if you're in a car accident and you have to move out of your house you do not lose your non-conforming status. And she stated that the question is whether the ZBA can convert the appeal without renotification.

Ms. Rubenstein stated that she thinks Mr. Friedrichson's interpretation that it is vacant is correct and noted that it has been vacant for more than a year. She stated that it is a lie for the ZBA to say that it wasn't vacant, but that the Board can interpret the section of the Code that we are willing to accept that vacancy and still allow it to keep its non-conforming status.

Mr. Vogt noted that Ms. VanLeuven told the Board that they vacated the house 4 months after the accident, which means that it has been vacant since 2003. He noted that all the neighbors in the area know that it has been vacant since that time. Ms. Rubenstein concurred that one cannot say that it was not vacant, because it was and the question is whether the ZBA can deal with it as an interpretation, which she believes is the better way to deal with it.

Mr. Dunn asked if there is anyone else present from the public who wished to speak to the application. No one spoke. He stated that since public notice had been served, he asked why the Board would have to publish again. Ms. Rubenstein agreed and stated that the Board will convert it to an interpretation of the Code. She stated that she and the Board need to think through the future implications.

Mr. Dunn asked Ms. VanLeuven how timely this decision needs to be made. She stated that there is time, that they can be patient. He noted that the ZBA wants to do it the right way. Ms. Rubenstein stated that the Board needs to think about what would happen as a result. Mr. Vogt stated that he knows of two other properties that this decision would impact and mentioned a property on Masten Road and Route 44. Ms. Rubenstein and Mr. Dunn recognized the property and Ms. Rubenstein asked why it was empty. Mr. Vogt stated that it was the landlord's choice up to this point to let it be vacant. He noted that there are a couple of others that could be affected by this interpretation. He mentioned another site that had to be vacated in order to remove the gas tanks due to leakage of gas into the soil which required aeration of the soil, etc.

Board unanimously decided to adjourn this appeal to provide time for Board members to think through the implications.

3. APPEAL #884 CATRINI – INTERPRETATION

Mr. Dunn reported that this application is for a property located at 201 Drake Road, 50.42 acres, for an interpretation of Section 98-11 to allow construction of a new primary residence and to allow the existing farmhouse and accessory apartment in the barn to be considered as caretaker housing. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 9/21/06

- Referral from the Planning Board with a negative recommendation unless the applicant affirms that there will be no further subdivision of this parcel and that there will never be rent collected from the caretaker's housing
- List of adjacent property owners who have been notified of this hearing
- Letter from Zoning Administrator, Mr. Friedrichson and copies of correspondence between Mr. & Mrs. Catrini and Mr. Friedrichson

Robert Catrini was sworn in and stated that he purchased the property in April 2000 and that his intention has been to build a house on a particular spot on the farm. He stated that there were two existing homes on the property already, which had been rental properties for many years. He stated that when he moved there, his children were of an age that required him to renovate the old lodge that was built in the 1940's. Mr. Dunn asked if that is the house that's right on the road. Mr. Catrini replied that the old farm house sits right on the road and the old lodge is farther up the driveway.

Mr. Catrini stated that he knew nothing about the Code requirements regarding the number of houses per property and that they proceeded with the renovation and created a beautiful home out of the old lodge. He stated that now that the children are either in college or getting ready to go to college, he subdivided the property about a year ago. He stated that they put the lodge on 17 acres that they did not want to create a development out of it. Mr. Catrini pointed out the lodge, the ancient barns, and the farm house on the map. He stated that they painstakingly restored one of the old barns and put an apartment upstairs. He stated that it has been a working farm for a long time and that he has heifers, horses, and one llama. He noted that the farm house was Dr. Simon's home in the 1940's. He stated that they put in a swimming pool and that he got carried away and restored the entire home. Because of the beauty and knowing that it is zoned 2 acres, he stated that he nonetheless subdivided into 17 acres. He described that he restored the barns which now house horses.

Mr. Catrini pointed out on the map the area in which he wants to build a house – which looks over the Catskills and the lake. He stated Mr. Friedrichson explained to him the restrictions in the Code regarding the number of houses permitted on a property. He stated that he understands that farms are permitted to have multiple accessory buildings. He stated that he does not live on the farm full time and therefore needs caretakers to take care of the horses and other tasks on the farm. He stated that the apartment is housing for the person who takes care of the horses.

Mr. Catrini summarized that he has a total of 65 acres, that in theory he has no problem with subdividing and selling, except that this very private area would no longer be private. He stated that the house gives him a different kind of caretaker than the 600 sq. ft. apartment does. He stated that he needs to have two tenant caretakers to maintain the property. If he is required to split it off, he would have to sell it because he would not be able to afford the taxes for both.

Mr. Dunn asked if Mr. Catrini now has a caretaker family living in the farm house. Mr. Catrini responded, yes, and that he discounts rent, sometimes for free. He stated that

there's a couple with two young children and that there is a woman who lives in the apartment.

Mr. Vogt asked who lives in the lodge. Mr. Catrini stated that they sold the property with the lodge.

Mr. Gerstner asked if Mr. Catrini still owns the 50 acres. Mr. Catrini responded, yes, and stated that he owns more land across the road. He stated that for the last 6 years he's been building the property with the vision of living there year round.

Mr. Vogt noted that this is similar to the property on Netherwood.

Ms. Rubenstein stated that he can have one accessory use and asked what if he got rid of the apartment. Mr. Vogt suggested that either he gets rid of the apartment or subdivide with a 5 acre parcel with the road frontage and just cut into the back. Mr. Catrini stated that not being experienced he made a huge mistake when he restored the buildings. He stated that he thought he was doing a great thing and that now he's "married" to the whole section of land. Mr. Vogt stated that he understands but that one of the things he must propose to him is to subdivide so that he can build his new primary residence. Mr. Catrini stated that the problem is the taxes, that the taxes on the 50 acres is about \$1,000 less than it was when he had the 4,000 sq. ft. lodge. He stated that what's going to happen now is in addition to having to give the house to somebody for free or some compensation, now he is going to have \$8,000 - \$12,000 taxes on the farm house and taxes on his own residence. He stated that he cannot afford to do this and that he must look at other alternatives.

Ms. Czech and Ms. Rubenstein both said "get rid of the apartment." Mr. Catrini stated that he would not have anyone to take care of his horses if he gets rid of the apartment. Ms. Rubenstein stated that the problem that the ZBA has is that this application is not unique, that the Board gets these requests. Mr. Vogt stated that this is about the fourth one in the past couple of years. Ms. Rubenstein stated that it is very difficult to distinguish one, that it opens up a lot of potential problems to permit something like this because it raises the question of why pay any attention to the Code. Mr. Catrini stated that he's aware of other farms that have more than one tenant house. Board members noted that they predate Zoning. Mr. Catrini stated that he had no idea and realizes that ignorance is no excuse. But he noted that common sense gets lost with the rules and laws and now the Planning Board is saying that he must promise never to subdivide. He noted that people want to see limited development but there's no help to get to that point.

Ms. Rubenstein stated that the ZBA has suggested to other applicants that what they are asking for is a structural change in the Zoning Code that would affect other properties in the Town. She stated that the Town Board would address that application. She also noted that that provision regarding one accessory use has been in this Code since it was adopted in 1974. She stated that it is a question for the Town Board as to whether they want to allow more than one accessory use where there's agricultural use. She stated that

Mr. Catrini may be 100% correct in his policy discussion but that the ZBA is not the Board that makes that policy decision.

Mr. Friedrichson stated that the Code says that an accessory building is something that is customary on a farm and the Code does not specify the number. Ms. Rubenstein stated that the Board has historically interpreted it to be one unless it predates Zoning, in which case the ZBA does not have the ability to limit that.

Mr. Catrini recounted the history of his property. He stated that he had the house and the tenant apartment and then he went for an accessory apartment, which was granted. He stated that the lodge was there, he had the tenant property, was having trouble getting someone who could do everything on the farm, therefore he converted it in order to get someone to take care of the horses, as well. Mr. Vogt stated that he technically has a primary residence on site and now he wants to build a brand new primary residence all on the same property. He stated that Mr. Catrini is creating a newer primary residence, and is using the existing primary residence for other accessory uses – that he is not changing its use. Mr. Catrini stated that if he had a primary residence and a caretaker's cottage and a second caretaker's cottage – he stated that he is now saying that he has a two caretaker's cottages and no primary residence. He stated that they determined that this is a primary residence now. Mr. Vogt stated that it was a primary residence and that now he wants to create a second primary residence – that it was a primary residence. Mr. Catrini asked which one was a primary residence and explained that the lodge was the primary, the farm house is the tenant house, and that he added on top of the old barn a studio apartment. He stated that they had a primary, a secondary for the tenant, and then they added a second tenant. So, he stated that he's not asking for anything different from that.

Mr. Catrini stated that Mr. Friedrichson stated that he did not want to make the determination. Mr. Vogt stated that Mr. Friedrichson is the zoning enforcement officer and he has to make a decision, that's his job. Mr. Catrini stated that Mr. Friedrichson stated that nowhere does it say that you cannot have 2 but that he did not want to be the one to make that determination. Mr. Catrini stated that they had 2 and asked why he would have been allowed to have a second. Mr. Vogt stated that he cannot answer what they acted on and that the ZBA can only act on the information that is given to the Board. Mr. Vogt stated that they erroneously gave Mr. Catrini a second apartment, but that the ZBA cannot comment on that because what is being presented to the Board is an additional primary residence.

Mr. Dunn stated that the one that the ZBA denied was because the Board felt it was a riding academy and not a farm. Ms. Rubenstein stated that she did not think that was the reason for the denial. She and Mr. Vogt agreed that it was because there were going to be 2 primary residences and the Board decided that there was enough property available for the applicant to subdivide a small piece off and put another primary on it. Mr. Vogt stated that Mr. Catrini also has enough property to subdivide a piece off so that he can build his new primary residence, not have any issues, and not set any precedence and conform to the laws.

Mr. Catrini stated that he would not be able to do that and would have to consider other alternatives. He stated that he sees three alternatives. He stated that he could subdivide the house, in which case he would not be able to have a farm any more because he would not have anyone to take care of it. He stated that if he subdivides and tries to keep it as a caretaker's, the taxes are prohibitive. He stated that he does not have any income from the property, that it is a pleasure farm, and that it would be a hardship. He stated that he would have to reconsider what to do with the property.

Ms. Czech stated that because he has cows and horses he needs 2 caretakers. Mr. Catrini stated that one person takes care of the horses. Ms. Czech asked if it is a pleasure farm or a working farm. Mr. Catrini stated that it is a complete working farm, that there's 22 head of cattle. Ms. Czech suggested that Mr. Catrini might minimize the number of horses or cows. Mr. Catrini stated that they have had agricultural exemption long before he came on the property and that he has tried to maintain it as such – it helps with the taxes but mostly for the animals.

Ms. Rubenstein stated that she still sees it as an issue that is more appropriately a Town Board issue to address, which is a policy decision because generally in the Town you can only have one primary residence. She noted that even though the caretaker currently lives there, next week it could be rented out. She stated that the decision cannot be based on who is living there, that it is a question of you have a principal dwelling and you are going to have a second principal dwelling and the Code does not allow for two principal dwellings on a single property. Therefore, she noted that people come to the ZBA all the time wanting to put a second principal dwelling on their property for a variety of compelling reasons, but that the ZBA does not grant those appeals. She reiterated that this is a Town Board issue because it would be a legislative change. Further, she noted that since prior to when the Code was adopted, what happens on farms is completely different now. She explained that in the old days farms had one person who lived in the house and was the hired help and did everything. She noted that Mr. Catrini has explained that that is not the way it is anymore, that he needs two different kinds of people, that he has more specialized needs. She stated that this change may be systemic and may be a perfectly good issue to take to the Town Board and point out the desire to preserve open space and allow people to have farms, then there needs to be a change in the Zoning Code to allow additional dwellings on farms. She stated that the ZBA has this issue all the time and has not granted the appeals.

Mr. Vogt reiterated the suggestion of subdividing a piece off. Ms. Rubenstein stated that if Mr. Catrini did not have enough property to subdivide, it might be a different issue. But she noted that he does have enough property. Mr. Catrini pointed out the contradiction between the ZBA suggesting that he subdivide and the Planning Board's recommendation telling him never to subdivide. Mr. Dunn corrected that information and stated that the Planning Board wanted Mr. Catrini's assurance that he would not subdivide further if the appeal is granted. Ms. Rubenstein stated that the Planning Board has no authority to require that.

Mr. Vogt stated that the Board has seen the changes Mr. Catrini has made on the property and explained that it's not that the ZBA is not receptive but that he needs to understand the predicament the Board is in. Mr. Vogt concurred with Ms. Rubenstein's opinion that Mr. Catrini's best venue for this type of issue would be the Town Board. Ms. Rubenstein stated that the Town Board can make a change that is specifically addressed to agricultural where the ZBA cannot. She noted that if the ZBA grants this appeal, that the Board has no ability to stop the person who wants to put a second residence on any property. Mr. Vogt stated that this is a regular issue that comes before the ZBA on a rotating basis and that it depends upon the year how many such appeals come to the ZBA.

Ms. Rubenstein stated that there is a difference because Mr. Catrini could make an argument that in order to preserve the farm, the agricultural open space, he has a need to have an additional principal dwelling. She stated that it saves taxes to put a second house on the property, but where does the ZBA draw the line. Mr. Catrini agreed that the taxes are the whole thing.

Ms. Czech stated that if he were to subdivide it would no longer be an agricultural farm. Therefore, she stated that in order to preserve that open space and keep it in agricultural use as a farm – she stated that she's explaining that argument to Mr. Catrini. Ms. Rubenstein stated that she thinks it's more compelling from the agricultural point of view.

Mr. Catrini stated that he has a couple of alternatives – get rid of the accessory apartment by taking out the kitchen. Ms. Rubenstein stated that that is up to the building department. Mr. Friedrichson stated that leaves a 3,000 sq. ft. house and that it does not make sense. Mr. Catrini stated that it is 2400 sq. ft. Mr. Friedrichson stated that the assessor says it's 3,000 sq. ft. Ms. Rubenstein asked if the Code says anything about the size. Mr. Friedrichson stated that it does not.

Mr. Friedrichson stated that to be a dwelling one must have all the ingredients of a dwelling – living room, dining room, bathroom, kitchen, bedroom. He stated that if you remove the kitchen, it is not a dwelling anymore but it is a studio, but it is not fit for people to live in. He stated that under those circumstances now there would be a studio and no accessory apartment. He stated that Mr. Catrini would have to apply for change of use on a building permit in order to convert the 2400 sq. ft. house from primary to accessory. Mr. Catrini asked when it became primary, he thought it was always accessory. Mr. Friedrichson stated that it always was a principal, that until he subdivided the lodge off, and now there's only one principal. Mr. Catrini asked who would make the determination if the apartment has to go and do you make that the tenant house and get a building permit. Mr. Friedrichson stated that Mr. Catrini would need to apply for a building permit for the new building and a building permit to change it from principal to accessory. Mr. Dunn noted that then the farm house would become the accessory building and the proposed house would be the principal.

Mr. Catrini stated that his options are to subdivide, in which case he would have to sell the house and accessory building or try to get on the schedule of the Town Board to work from the agricultural aspects. Mr. Catrini expressed that he has spent so much money already just to get somebody to live there.

Mr. Dunn stated that if Mr. Catrini has a little time it might be beneficial for him to approach the Town Board. Mr. Vogt noted that the Town would have to change the Code for this situation because the current limit is 1 primary residence, that he would be putting forth through an agricultural statute that to keep it as a working farm there needs to be additional primary residence. Mr. Dunn asked why the Board is considering the farm house as the primary residence. Mr. Friedrichson stated that there is no provision in the Code that says that you can only have one caretaker's accessory building and that he was hesitant on his own to make the interpretation on this appeal. He stated that if the ZBA interprets the 2400 sq. ft. building as accessory, then there is nothing in the Code that restricts him from having it.

Mr. Catrini stated the house is really two apartments, which he says is legal and has always been this way. Mr. Vogt stated that it must be a non-conforming that predates Zoning. Mr. Friedrichson stated that some locations don't make it a two-family house. Ms. Rubenstein concurred. Mr. Catrini stated that the house has been rented out many times to two different parties. But that he did not want to be a landlord and he wanted to keep one family there.

Mr. Dunn stated that if Mr. Catrini builds a large house on the hill, the apartment and the farm house would now be subordinate buildings and no longer principal residence. Ms. Rubenstein stated that customarily the ZBA has not granted more than one subordinate residence. Mr. Vogt concurred and advised caution. Ms. Czech stated that he had 2, that he got a permit to build a second. Ms. Rubenstein stated that because they got it once – whether maybe it was a mistake – does not mean that the ZBA is bound by that. She stated that the ZBA has had numerous applications from people who want to put a second residence on their property. Mr. Dunn stated that he recalls two incidences, one of which was Bob Smith – that he was the only dissenting vote because he felt it was a farm and the rest of the Board stated that it is a riding academy. Ms. Rubenstein stated that her decision had nothing to do with it being a riding academy – that it pertained to the property up the road where they wanted their in-laws to live and it is impossible to distinguish between the appeals.

Mr. Vogt stated that it also becomes a law enforcement issue. Ms. Rubenstein stated that unless it is in the statute that if you're a farm and you meet certain requirements of a farm that you can do whatever you want then the ZBA is bound by a piece of property with two residences on it. Mr. Dunn stated that common sense says if you have a farm you must have help on the farm. Ms. Rubenstein stated that she would not be willing to litigate the person who comes in wanting the second residence because they have plenty of property. She stated that if the ZBA is content to grant these applications whenever they come in, then do so. She stated that this property could stop being a farm tomorrow. Further, she stated that there are no guidelines to say that now you've got it you have to

stay a farm. Therefore, she stated that it is really a legislative issue where you can define what a farm is. She stated that could become a piece of property that no longer is a farm and has 2 residences on it. She stated that she's not willing to go there without having a legislative determination of when it is appropriate and when it is not appropriate.

Mr. Catrini noted that nowhere in the Code does it say that you cannot have 2, which implies therefore that the discretion is within the ZBA's power to decide. Mr. Vogt expressed his understanding and stated that based on appeals that have come before the ZBA in the past, he cannot justify the second primary residence because that's what he believes would exist. He stated that 3 weeks from now, 3 months from now, a year from now Mr. Catrini may decide to sell the property and the next person says I can have someone living in the other primary residence. Ms. Rubenstein noted that it would definitely save taxes, so why doesn't everyone put a second residence on their property.

Ms. Rubenstein stated that the ZBA's charge is to consider the implications of its decisions on all future applications. Mr. Vogt stated that there have been a lot of people who want to put family on their property in order to take care of them and the ZBA has always turned them down because it would be creating a second primary residence. He noted that the answer has always been to subdivide which, unfortunately, has tax implications. Ms. Rubenstein noted that that is an option which is open to Mr. Catrini and which would not cause the ZBA to have any problem granting the appeal. Mr. Catrini stated that if he subdivides he stands to gain much more financially. Mr. Vogt stated his understanding that Mr. Catrini can do a bunch of 2-acre parcels. Mr. Catrini stated that if he were to subdivide then his dream is gone. Ms. Czech stated that it would no longer be open space or a farm.

Ms. Rubenstein stated that the Code change that Mr. Catrini is asking to make is really a legislative issue. She noted that the Town Board is in a position to say that they will allow it for farms but not for non-farms. She stated that if it is an open space issue, there are plenty of big properties. Ms. Czech stated that she keeps going back to the history where Mr. Catrini had an accessory and he asked for another one and it was granted. So, that he had 2 accessory buildings with a primary. Mr. Friedrichson corrected that information and explained that the lodge and the farm house were both principal buildings predating Zoning. He explained that Mr. Catrini separated the lodge and then had no accessory. He explained that Mr. Catrini came in and applied for one in the barn which was approved based on the 60 acres and the horses. He explained that Mr. Catrini did not have 2 accessory buildings. Mr. Catrini stated that he thought he did because he was using it as such. He stated that he was using it as a tenant house but it was a principal house.

Mr. Vogt stated that this is something that will come to the ZBA repeatedly and is a legislative issue that can properly be addressed through the Town Board through its agricultural aspect which distinguishes this application. He explained that the Town would have to act on this saying that primary on regular non-working farms and non-agricultural properties would be different from Mr. Catrini's application. Mr. Catrini stated that in the past the ZBA has made it their practice to impose a limit even though

the Code is silent. Mr. Vogt concurred with the assessment, that it has always been one, and noted that the ZBA must make decisions that are consistent across the board and that create continuity for all. He noted that the Town has certain protocols – such as the sign ordinance – which it follows and from which it does not deviate. Ms. Czech stated that every situation is individual and is not cookie cutter.

Mr. Maucher asked if there is anything that prevents Mr. Catrini from applying for a building permit to establish a new primary building and several accessory building. Mr. Friedrichson stated that it depends on what kind of accessory buildings he's talking about. Mr. Maucher stated that as long as it is used in support of primary buildings, as long as you have a farm is it not customary to have hired help to work the farm and you house them as well. Mr. Friedrichson stated that that is exactly the subject of this application. Mr. Maucher stated that there is no limit on how many he can have. Mr. Friedrichson stated that that is correct but it is not customary to have 14. Mr. Dunn stated that he's of the opinion that having 2 is one thing, but that having 14 is not OK.

Ms. Rubenstein stated that it is not just a question of number, that what has been before the ZBA is principal uses. Therefore, she stated that you must be cautious. She stated that the meaning of the word accessory and noted that very often bunk houses on farms in the area are preexisting Zoning. She stated that it is not entirely clear that those would be permissible under Zoning now. Mr. Vogt noted that a lot of the farm workers eat at the main house and don't have kitchens. Therefore, Ms. Rubenstein stated that you can call it accessory because someone lives there but technically it's not accessory. She noted that an accessory building is a barn, a smoke house, sheds, it is not really intended to describe a residence where people live. She stated that the ZBA has gotten off the track a little regarding the definition of what is accessory. She stated that if one looked back at what exists in this Town, you would not find principal residences more than one on a property post-Zoning. She stated that she does not think you would find any and would only find those that are preexisting Zoning.

Ms. Rubenstein noted that what Mr. Catrini is really asking for is 2 principal uses on the property plus an apartment. She stated that she's concerned about the distinction being made that it's a farm and asked under what definition is it a farm. She stated that when the next person comes to the ZBA who keeps a cow, a pig, and a goat, then is that a farm and under what definition. She stated that she's making this point so that the Board members will consider the impact on the future applications for people who want to put their in-laws on their property and they're going to say we're a farm. She stated that this is not a typical accessory use to a farm, rather he wants to allow a caretaker to reside in a residence on the property. She stated that if the Board makes the distinction that this is a farm, others will be in with their goats claiming that it is a farm. She asked where is the definition of a farm. She stated that if the ZBA adopts a resolution allowing a second principal use because this is a farm, then the ZBA must be very careful in the definition of a farm. She stated that the ZBA must be wary of opening the flood gates to other applications.

Ms. Czech stated that each separate residence has a designation. She stated that change the designation of what you're calling the principal and then you don't have 2 principals anymore. She stated that it becomes an accessory because it is subordinate. Ms. Rubenstein stated that she does not think accessory is defined as apartments, but usually means sheds. Mr. Vogt read from the Code the definition of accessory use.

Mr. Catrini stated that he wanted to address how a farm is distinguished. Mr. Dunn stated that there's a definition in the Code. Mr. Catrini stated that he files application for agricultural every year, it is documented every year. He stated that in order to get an agricultural exemption you must have over 10 acres and produce a certain level of income. He stated that the farmer he leases the farm to for a \$1 year to keep the cows there has to produce a certain income from the cows in order for it to be considered a farm. He stated that if you have an 8 acre parcel with 5 horses on it, that is not a farm. He stated that you can call it a farm but that you cannot get a farm exemption for it in the State. He stated that because NYS wants to preserve the land they set the level at 10 acres or more with a minimum of \$10,000 gross annually. Therefore, he stated that he thinks the point is well taken and the valid response is that his property has been documented as a farm for 100 years.

Mr. Dunn asked if there was anyone from the public who wanted to comment on the application. No one spoke.

Ms. Czech referred to Section 98-11 of the Code which talks about the definition of a farm and the usual dwellings and necessary or usual farm structures for storage or equipment.

Mr. Dunn: MOTION TO CLOSE PUBLIC PORTION OF THE HEARING; VOTE TAKEN AND PASSED UNANIMOUSLY

PUBLIC HEARING CLOSED

Mr. Catrini stated that there must be a true distinction between a farm and something that's called a farm and that he's been trying to maintain the property as a true working farm.

Ms. Rubenstein left the meeting and Mr. Sagliano joined as Alternate.

4. APPEAL #885 - WALKER INTERPRETATION

Mr. Dunn reported that this property is located at 193 Ward Road, R-2 Zone, and is an application for an interpretation of Section 98-5 to deem the use of the property is a private farm and not a riding academy.

Mr. Peter Pfabe, 187 Ward Road, Salt Point, NY, was present and was sworn in. Mr. Pfabe stated that a few months ago the ZBA heard from his wife, Heidi Walker, in her application for a Special Use Permit. He offered the following background: they received a letter from the Town many months ago from Mr. Friedrichson saying that he

was unable to grant the Certificate of Compliance because as a riding academy they had to go through a process. He stated that his wife came to the Zoning Office and was shown the Code for a riding academy, which she felt did not pertain to their property. He stated that she was basically lobbied to take an easier route – to get a Special Use Permit and then to proceed down that road. He stated that they appeared at the ZBA and were granted the Special Use Permit. He stated that he approached the Planning Board for the next steps. He stated that he was a little astounded because a number of his neighbors appeared at the ZBA meeting and were disappointed that they were getting the Special Use Permit not knowing exactly what the implications might be to the adjoining properties.

Mr. Pfabe stated that the Planning Board proceeded to ask for a site plan with lighting details, parking details, etc. He stated that he understands why his neighbors would be a little concerned given all the details the Board was asking for. He stated that Ward Road is one of the last dirt roads in the Town. He stated that in his reading of the Code he got stuck on one word – “continually.” He read a portion of the Code regarding 6 or more horses. He noted that there are 10 stalls, that they own 5 horses and board 5 horses, and that they are compensated for those 5 horses. He stated that he has invited the ZBA members to come do a site visit at his property. He noted that Roger looked at the property and has not been out there since the stalls have been filled. He noted that mention was also made about advertising and he stated that he graciously admits that his wife advertises through one of the organizations she involved with. He noted that the advertising enables them to brag about their new barn and to fill the stalls.

Mr. Pfabe stated that the word “potential” was bandied about at the Planning Board meeting. He stated that he has the potential of running an autobody shop in his barn, but that he does not do so. He noted that he has the potential of having 6 or more horses for compensation, but that he does not have that number. Therefore, he stated that he’s asking for an interpretation that they are not a riding academy but are a farm.

Mr. Gerstner read from the minutes of the March meeting where Ms. Walker stated that she owns 8 horses for her own private use. Mr. Pfabe stated that they have a trainer who exercises the horses. He stated that the trainer is a superb trainer and that they have Olympic hopes for themselves. He stated they will need more Olympic quality horses in the future. He stated that it is clearly marked on each of the stalls who the owner is and invited that Board members to come out and take a look. He stated that currently they have 5 of their own horses and 5 boarders.

Mr. Gerstner stated that he walked around the barn but did not go in.

Mr. Maucher asked Mr. Pfabe what it is that they want to do that they are unable to do. Mr. Pfabe stated that he wants his property to be classified as a farm and so that they can comply with a horse farm as opposed to a riding academy, which requires Special Use Permit and Planning Board approval. He noted that Planning Board approval incorporates things that he does not want to do to his property. He stated that he has tried to make as little aesthetic impact as possible and that he was concerned that his neighbors

showed up at the meeting. He stated that the biggest impact they have is on the hunt club because where their barns are located is where the hunt club used to round up their horses to catch the fox. He stated that they felt bad about that so, therefore, they joined the hunt club. He stated that he does not want to have to put up lights or accommodate parking. He stated that the questions he was being asked by the Planning Board are so far out of what they conceived for their horse farm that he wants to back away. He stated that both he and his wife now think that they should not have applied for the Special Use Permit but should have gone the other route.

Mr. Maucher stated that Mr. Pfabe and Ms. Walker applied for and received a Special Use Permit and that now they now longer want the Permit. Mr. Pfabe responded, yes, because he does not want the Permit anymore because he does consider his property to be a riding academy. Mr. Maucher asked what would prevent Mr. Pfabe from doing that. Mr. Gerstner stated that right now he is designated a riding academy and that now he wants to go back to being a horse farm.

Mr. Dunn stated that the file contains:

- list of adjacent property owners
- affidavit of publication in The Poughkeepsie Journal dated 9/21/06
- referral from the Planning Board – “negative recommendation as all evidence submitted indicate the requirement of a Special Use Permit for a riding academy

Mr. Maucher asked whether Mr. Pfabe had intended at some point in time to board more than 5 horses. Mr. Pfabe stated that they never intended on boarding other people’s horses at all. Mr. Maucher expressed his confusion regarding why Mr. Pfabe was required to ask for a Special Use Permit, whether he was prevented from boarding his own horses on one property. Mr. Vogt stated that the Permit was for the indoor riding academy, that the riding ring was one of the reasons.

Mr. Maucher stated that it sounds like Mr. Pfabe changed his mind from what they originally intended to do and now that they don’t want to be a riding academy and therefore have no need for a Special Use Permit. Mr. Friedrichson stated that if you look at the definition of a riding academy it mentions boarding as one of the things that is included in the count of 6, along with other things (stabling, driving, and riding). He stated that if the Board asked Mr. Pfabe what other activities there are on the property he would probably say that there is, in addition to stabling, also driving and riding. Further, he stated that if the ZBA decides that what Mr. Pfabe is doing is not a riding academy, it would be automatic. Mr. Maucher stated that it is not the ZBA’s decision, that he applied for a Special Use Permit which was granted and now he does not want it. He stated that from his perspective if Mr. Pfabe does not want the Permit then he does not need it. Mr. Maucher wondered what the ZBA could do in this case where the applicant no longer wants to be a riding academy and does not need the Permit. Mr. Friedrichson stated that automatically he does not need a Special Use Permit anymore and he does not need a site plan and he can get a Certificate of Occupancy for a horse farm. He stated that that was the original application but that it turned out that there are other activities besides just a barn for pet horses.

Mr. Pfabe stated that according to the Code if he has 6 horses on the property that they are riding, driving, training for compensation, then, he is a riding academy. He stated that he does not have that. Mr. Vogt stated that the compensation is the key, he's just keeping his pets. If he wants to go for the Olympics and wants to keep 10 of his own horses, Mr. Vogt stated that he's not getting paid for it. He stated that if Mr. Pfabe were stabling 8 horses for compensation and did not want to be a riding academy that would be an issue. But he noted that he has 5 horses or fewer and that he's not being paid. Mr. Maucher noted that even if he were compensated for 1 or 2 of the horses he still would not be a riding academy.

Ms. Czech stated that Mr. Pfabe is advertising on the web and asked if he has a website that advertises the barn as a riding academy. Mr. Pfabe stated that they do not have a website but that his wife put out an ad through one of the organizations, but that he is not advertising as a riding academy. He stated that they were proud of their barn and wanted to get the word out in the dressage community about their facility. Mr. Dunn stated that when he reads the ad dated 1/27/06, the description includes "a newly built dressage, boarding, and training facility ... heated 10 stall barn and heated indoor 80' x 210' riding arena ... full time training, boarding, and lessons available." Mr. Pfabe stated that he thinks Mr. Dunn is right and that the minute that they have 6 or more horses for which they are providing those services for compensation then he would have to go to the Planning Board. Mr. Vogt stated that if the ZBA rescinds the Special Use Permit Mr. Pfabe would have to come back and apply for it all over again. Mr. Pfabe disagreed and stated that he thinks it is the Zoning Administrator's job the minute he has 6 horses then he's in trouble, but that he intentionally will not have 6.

Mr. Dunn noted that it becomes a very hard thing to prove and hard to enforce. Mr. Pfabe asked if it is his fault and if it should be held against him. He noted that the previous gentleman stated that he has horses and no one asked him how many or what he was doing with them. Mr. Maucher stated that the ZBA took him at his word when he applied for the Special Use Permit that he would do the things and that's why the ZBA considered his request. Mr. Pfabe reiterated that they were told that the easiest way to get the C.O. was by applying for the Special Use Permit. Mr. Maucher stated that the ZBA did not tell him that. Mr. Pfabe agreed that the ZBA did not tell him that. He stated that as they followed that path they came to understand that that is not where they want this property to go. He stated that one day he and his wife will live on the property with their horses and dogs and cats.

Ms. Czech stated that she has applied to NYS as a corporation and then did not want it anymore and the State dissolved it for her. She stated that this is possible if Mr. Pfabe is not going to do a riding academy after all. Mr. Vogt stated that the ZBA has never been down this path because the Board has never had one where the applicant has asked for the Permit to be rescinded. He noted that the ZBA granted the Permit and under the conditions have the right to rescind or terminate any Special Use Permit. He stated that it can be terminated for misuse and that it's a possibility that, at the request of an individual, it be rescinded. He stated that he does not have a problem rescinding it.

Mr. Dunn asked if there was anyone from the public who would like to speak to this application. No one spoke. Public Hearing was closed unanimously.

5. APPEAL #886 KIRKPATRICK – VARIANCE

Mr. Dunn noted that the property is located at 1360 Route 44, H-2, 0.52 acres, and is an application for a variance from minimum side setback requirement for proposed construction of a handicapped deck and ramp on home on parcel. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 9/21/06
- Referral from Dutchess County Dept. of Planning and Development: “state road ... area variance ... matter of local concern ... no comment.”
- Recommendation from Planning Board: positive
- FAB offers no comment as it represents no fire or safety issues
- List of adjacent property owners

Mr. Mark Burke, 1358 Route 44, was sworn in. Mr. Burke stated that there’s not much that he knows about this project and asked about the specifications. He stated that he has a driveway between the two houses and that he does not know the required setbacks. He stated that he has a construction trailer and another trailer in the back and he is curious if the ramp would get in the way.

Mr. Rick Rieland, representing the applicant, was sworn in. Mr. Rieland pointed out the plans to Mr. Burke and answered his questions about the design. Mr. Rieland noted that there will be 1’ between the ramp and the driveway, that it will run onto a slab at the bottom, and that it is a 40’ 40” drop – one inch per foot. He noted that the existing ramp is very dangerous. Mr. Burke was reassured and stated that he had no problem with the project.

Ms. Perkins asked why they would put it 1’ off the house. Mr. Rieland stated that there is an air conditioning unit and windows that open and that they did not want them to be a safety issue while on the ramp. Mr. Burke said that it looks fine as long as they can get in and out.

Mr. Dunn noted that the variance requested is 9’. Public portion of the hearing was closed unanimously.

Ms. Czech read the worksheet into the record (original on file).

Ms. Perkins: **MOTION TO GRANT THE APPEAL; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 7-0-0.**

6. APPEAL #880 – SECOR

Ms. Perkins: **RESOLUTION TO DENY**

Whereas the applicant, Darryl Secor, has submitted proof in support of his application for a variance of 25’ in the front and 13’ on the left to build a 2-car

garage which under the Code of the Town of Pleasant Valley requires the issuance of a variance, and

Whereas such proof has been duly considered by the Board at a public meeting, and

Whereas members of the Board made a visual inspection of the site, and

Whereas an area variance is a request for relief from dimensional standards contained in the Zoning Ordinance and it requires the Zoning Board to balance the benefit to the applicant versus the detriment to the health and safety of the neighborhood, and

Whereas the Planning Board recommended against the granting of a variance, and

Whereas the neighbors opposed the amount of the variance, and

Whereas the Board has considered the following:

- 1. That the proposed garage is only 2 feet from the property line and this may cause a maintenance problem**
- 2. the proposed location potentially creates a safety hazard for those using the adjacent driveway to access Route 44**
- 3. there are other possible locations for the garage.**

Therefore, balancing the benefit to the applicant versus the detriment to the community, the ZBA determines that the safety concerns outweigh the benefits to the applicant and therefore balance in favor of denying the variance.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 7-0-0

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DISCUSSION

1. APPEAL #883, BUDD VARIANCE

Board agreed that Appeal #883, Budd variance, will be adjourned to the next ZBA meeting.

2. APPEAL #884, CATRINI INTERPRETAION

Board agreed to continue the Catrini Appeal #884 to the next ZBA meeting.

3. APPEAL #885, WALKER INTERPRETATION

Mr. Dunn asked the Board what it wanted to do with regard to the Walker Appeal #885. Mr. Vogt stated that Mr. Pfabe is asking for something that the ZBA has not done before, to rescind the Special Use Permit. He stated that he travels the area a lot and that he does

not see any traffic or cars in there on a regular basis during the week. He stated that he does not know what the traffic is like on a Sunday when he's not in the area. He guessed that if there were a riding academy that there would be a handful of cars in the area.

Ms. Czech stated that she was in the area on a Sunday recently and took note that there was no traffic on the road. Ms. Perkins stated that her granddaughter rides in the area and concurred that traffic is sparse. Mr. Vogt stated that he tends to believe Mr. Pfabe based on his observation on a regular basis. Mr. Dunn stated that there is also the advertisement on a general posting website that describes "Fieldpoint Farm, a newly dressage, boarding, and training facility located on 90 acres in charming Salt Point, NY, heated 10 stall barn and heated indoor 80' x 210' riding arena, access to miles of trails from the property, close to Millbrook and Rhinebeck, full time training, boarding, and lessons available, clinics with European dressage trainers available." Mr. Dunn stated that that sounds to him like a commercial enterprise.

Ms. Czech stated that he can give riding lessons and do those things but it is up to a certain number of horses. She asked if someone brings their horse and pays him for the use of the facility for the day and rides on the property or attends a clinic once a month on a Saturday and leaves at the end of the day, does that add to the count of horses on the property. She noted that he will do clinics. Mr. Vogt asked if the applicant invites people over to ride on his property, isn't he entitled to the use of his property as he wishes. Ms. Czech stated that her sister takes her horses over to someone's property to ride for the day or for a clinic she pays them and she takes her horses back home at night.

Mr. Vogt stated that there are more farms with horses on Ward Road and Clinton Avenue than anywhere else in the Town. He stated that there's no issue, he's not being compensated, if the website permits and people come in and complain after he's asked for the removal of a riding academy, then the onus would be back in his lap to prove that he's not doing it. He stated that if someone were to complain about trucks and cars like on other properties where there was major activities going on and trailers and dust. Mr. Gertsner stated that it sounds like the whole neighborhood is involved in the Hunt Club and that Mr. Pfabe is getting along with his neighbors because he joined the Hunt Club so it is unlikely that anyone would complain. Mr. Vogt stated that until it becomes an issue you have to believe because there are no cars or visible sign and the only thing you have is a website. He stated that he would have to go under the premise of what the applicant is telling the Board that he only has 5 horses. He stated that the applicant has changed his mind and does not want the Special Use Permit.

Ms. Perkins noted that he's asking for an interpretation of whether he's a riding academy or a horse farm. Ms. Czech stated that the applicant needs to request that it be rescinded. Mr. Friedrichson stated that if the ZBA decides that he is not a riding academy then automatically he does not need a Special Use Permit, which will expire in one year anyway. Mr. Vogt noted that if he is not using it, he loses it anyway, but he needs a Certificate of Compliance. Mr. Maucher stated that it is not for the ZBA to determine whether he needs a Permit. Mr. Vogt asked Mr. Friedrichson when the clock starts on the year period – if he does not use it within a year it evaporates – when does that clock start.

Mr. Dunn noted that the ZBA made the decision in March 2006 that he was a riding academy. Mr. Sagliano asked about the Certificate of Compliance. Mr. Gerstner noted that the Planning Board is making him address issues of lighting and parking for site plan approval in order to get the C.O. as a riding academy.

Board discussed the number of horses that the applicant has now and noted that the number varies from time to time and the website advertisement.

Discussion adjourned.

MEETING ADJOURNED BY CHAIRMAN DUNN AT 11 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the September 28, 2006, 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 16, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on November 16, 2006, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:59 p.m.

Members present: John Dunn
 Tim Gerstner
 Rob Maucher
 Helene Czech
 Don Sagliano, Alternate

Also present: Dieter Friedrichson, Zoning Administrator

Members absent: Christina Perkins
 Ronald Vogt
 Lisa Rubenstein

1. APPEAL #887 TOCCO – VARIANCE

Mr. Dunn noted that this appeal is for a property on Creek Road, 1.15 acres in an R-2 zone and is an application for a variance from minimum acreage requirement on an existing substandard lot for the location/construction of a single-family residence. He noted that the file contains:

- Comment form from Fire Advisory Board: no comment as it is strictly within the purview of the ZBA
- Referral from Planning Board: negative recommendation as there are many questions regarding the accuracy of the documentation submitted and the proximity of proposed construction to flood plain and wetlands area of regulation
- Affidavit of publication in The Poughkeepsie Journal dated 11/10/06
- List of adjacent property owners who have been notified of this public hearing

Mr. Bryce Di Nunno, 42 Park Terrace East, New York, NY, was sworn in. Mr. Di Nunno asked about the Planning Board's objection with regard to the wetlands. Mr. Dunn stated that according to the Planning Board's referral, the property is too close to the flood plain and the wetlands area. Mr. Di Nunno asked what they are using for documentation and stated that he set it back 100' from the creek. He stated that according to the Planning Board's comment the entire property is wetlands which does not show on the FEMA maps.

Mr. Dunn reviewed the file and stated that there is nothing that authorizes Mr. Di Nunno to speak for the applicant. He noted that the ZBA requires a notarized letter from Mr. Tocco authorizing him to speak on his behalf. Mr. Di Nunno asked if he can get a list of the objections.

Mr. Friedrichson stated that the file contains maps from the CAC that show the delineation of the wetlands buffer and a map showing the flood plain area. He noted that those issues would be addressed by the Planning Board. He stated that the Wetlands Permit would have to be issued by the Planning Board. He pointed out that the appeal before the ZBA is for a variance on a pre-existing substandard lot.

Mr. Dunn stated that to move forward on this appeal the ZBA needs documentation from the owner that authorizes Mr. Di Nunno to speak on his behalf. Further, he informed Mr. Di Nunno that even if the ZBA grants the variance, the applicant still has to go through the Planning Board for the other issues.

Mr. Dunn noted that the public portion of this hearing remains open and is adjourned to the next ZBA meeting.

2. APPEAL #883 BUDD – VARIANCE

Mr. Dunn stated that this appeal is carried over from the 9/28/06 ZBA meeting and is an application for a use variance to allow residential use in a commercial zoning district.

Ms. Donna VanLeuven, the Budd's daughter, was present and was previously sworn in. She stated that at the last meeting Ms. Rubenstein stated that she needed some time to think about the circumstances of this appeal and remembered that she wanted to see mortgage documentation – which she submitted. Ms. Czech noted that the documentation is from the First Niagara Bank and lists the mortgage account number and the principal balance. Mr. Dunn stated that it is not notarized. Ms. Czech noted that it does not record who holds the mortgage or who owns the property.

Ms. Czech noted that one of the tests to grant a use variance is to prove that the property cannot be used as a commercial property and that there is no documentation that proves that. She noted that this is a special circumstance, that it was an accident which kept him out of the home. Ms. VanLeuven noted that she and her brother occupied the house for one year and 4 months after the accident. Ms. Czech noted that this is her brother's legal residence.

Ms. Czech reminded Ms. VanLeuven that the ZBA needs a statement from a real estate agent that the property cannot be used for commercial use.

Reading from the minutes of the 9/28/06 ZBA meeting, Mr. Friedrichson noted that the Board stated that it will “convert it [this appeal] into an interpretation of the Code.” Therefore, he stated that the application for a use variance no longer exists. He stated that the ZBA now needs to come to a conclusion regarding whether the use was discontinued or whether the use has never expired – that the residential use has continued and did not stop. Mr. Dunn noted that it was converted from an appeal to an interpretation. Ms. Czech stated that Ms. VanLeuven and her brother did not decide to leave, but rather he had to leave. Mr. Friedrichson stated that if that residential use was not discontinued for a year then the applicant does not need to appear before the ZBA. He stated that, in that case, it is a continuation of a non-conforming use.

Ms. Czech stated that the ZBA needs to consider implications of this decision as it affects other properties. Board members noted that this is a unique circumstance that does not apply to other properties. Mr. Dunn noted that an interpretation is that it would have remained a residence because of the special circumstances.

Ms. VanLeuven stated that her brother is a single man and that he was making it his home. She noted that he made some improvements to the home.

Mr. Dunn stated that the interpretation is that it has been a residence and, except for the special circumstance, would have been occupied continuously; therefore it is considered to be in continued use. He noted that the specific merits of this case, i.e. the applicant would have remained in the house if it had not been for the car accident and his need for rehabilitation, and based on that the ZBA would consider it to be a continuous residency and, therefore, a use permit would not be necessary.

Mr. Friedrichson stated that it is not necessary to formally convert this application to an interpretation.

Board and Mr. Friedrichson reviewed the applicable Sections of the Zoning Code. Mr. Dunn noted that the property pre-dates Zoning and, therefore, is not a non-conforming use. Mr. Friedrichson stated that it is non-conforming because the use is not allowed in a commercial district.

Ms. Czech argued that the property was used residential for the year that he was in the hospital because it was still his home. She stated that if someone goes to the hospital it does not mean that it is no longer the person's house and does not mean that s/he does not live there. She stated that he was in the hospital because he had to be. She stated her belief that there's a difference if someone leaves and stays somewhere else voluntarily, but he was staying in the hospital because he had to. Board member referenced a Section of the Code (98-34) that addresses this. Ms. Czech again stated that it was still his house and that he did not discontinue living there – his mail came there and his things were there while he was in the hospital. Board member asked if he established a new address while he was in rehab. Ms. VanLeuven stated that he did not.

Board discussed whether to adjourn the decision until Ms. Rubenstein and Mr. Vogt who had objections are present at the next ZBA meeting. Mr. Dunn noted the issue of establishing a precedent. Ms. Czech stated that the Board must think about implications but emphasized that the Board is considering this individual property. She repeated that this was still his home even though he was in the hospital and noted that she would not want to set a precedent for people being told that because they were in the hospital their home has been changed.

Ms. Czech: **Resolution that there was no break or change in the residential use of the property because the occupant was in the hospital in rehabilitation out of**

necessity rather than choice, that the property has continued to remain as it was the entire time, therefore no variance is required.

Whereas the use of the property has continued to remain residential as it was, and

Whereas there has been no break in the non-conforming use,

Now, therefore, be it resolved that a use variance is not necessary.

SECONDED BY R. MAUCHER

VOTE TAKEN AND APPROVED

- **D. Sagliano – in favor**
- **T. Gerstner – in favor**
- **R. Maucher – in favor**
- **H. Czech – in favor**
- **J. Dunn – in favor**

3. APPEAL #884 CATRINI – INTERPRETATION

Mr. Dunn stated that Mr. Catrini has applied for a subdivision which indicates a withdrawal of this appeal. However, he suggested that this appeal be adjourned pending receipt of Mr. Catrini's formal notice of withdrawal.

4. APPEAL #885 WALKER – INTERPRETATION

Mr. Dunn noted that this appeal has been adjourned from the previous ZBA meeting. He stated that the Board has a letter from the Dutchess Land Conservancy that is not notarized and, therefore, he cannot read it into the record.

Ms. Czech confirmed that at the last meeting the Board discussed the request to rescind the Special Use Permit, which is a first for the ZBA. She noted that one can start a corporation in NYS and that you can dissolve it at any time. She recalled the ad on the web that advertised the property as a riding academy, which was one of the issues that was raised last time.

Mr. Peter Pfabe was present and was previously sworn in. He noted that the ad on the web does not say anything about a riding academy. He stated that part of the reason they put the ad on the web was that they were proud of what they had built and that they wanted to introduce themselves to the community and especially to the dressage community. He stated that as a result of the discussions with the ZBA and Planning Board they have canceled the ad on the website.

Ms. Czech also noted that one of the issues was the number of horses on the property, which she noted they are now in compliance with as far as not being a riding academy. Basically, she noted that the applicant has changed her mind. Mr. Pfabe concurred and stated that they had no intention of creating a riding academy for themselves or for their

neighbors. He noted that they are not a riding academy and do not want to be one. Therefore, he stated that they are asking the ZBA to set aside the Special Use Permit and are appealing the designation as a riding academy. He noted that they have the potential of being a riding academy, but they do not want to be judged on this potential.

Mr. Maucher asked if being designated as a riding academy caused problems. Mr. Pfabe replied, yes, it requires lighting system, paving, and other things that they do not want to do as part of the site plan approval process. Further, he stated that it would jeopardize their land conservancy tax break or their Dutchess Land Conservancy decision. Mr. Friedrichson concurred that if this is not a riding academy then there would be no implication for a zoning viewpoint and no implications from a planning viewpoint, there would only be the need for a building permit which was already approved. He noted that one more site visit would suffice in order to grant the Certificate of Occupancy.

Mr. Pfabe stated that they applied for and were granted a variance from NYS on the sprinkler system on the bottom floor. Further, he asked the ZBA to base their interpretation of his facility on the definition in the Code of a riding academy. Ms. Czech noted that the Special Use Permit for the riding academy will expire in a year anyway and, therefore, the ZBA does not need to change anything. Mr. Friedrichson stated that if the ZBA finds that this is not a riding academy then Mr. Pfabe does not need the Special Use Permit or a site plan.

Ms. Czech reviewed the original application. Board discussed the fact that the Special Use Permit will expire in 4 months – in March 2007. Mr. Friedrichson reiterated that he designated the facility as a riding academy based on all the acreage and the website ad and that now the applicant is asking the ZBA for an interpretation of this designation.

Mr. Dunn noted that the Planning Board provided a negative referral “because all evidence submitted indicate the requirement of the Special Use Permit for a riding academy.” And he noted that the applicant does not want to be a riding academy for the reasons stated before. Mr. Friedrichson reminded the Board members that the Planning Board needs the ZBA’s interpretation because the Planning Board has already been making recommendations on this application. He stated that the ZBA has the authority to make an interpretation and that this interpretation is required for the Planning Board to know whether to proceed on the site plan approval process.

Mr. Pfabe stated that they are trying to get a Certificate of Occupancy, that they had Roger out to their facility a number of times, that they fulfilled certain requirements (i.e., Fire), and then they received a letter from the Zoning Administrator, Mr. Friedrichson. Mr. Pfabe noted for the record that Mr. Friedrichson has never been to the property and has never been inside the barn, that he’s offered to drive him there. As a result of discussions Mr. Friedrichson had with someone or some people, he came to a determination that his facility is a riding academy, which meant that he could not get his C.O. until he gets a Certificate of Compliance. Mr. Pfabe recalled that Mr. Friedrichson informed his wife, Ms. Walker, of their options – to get a Special Use Permit or to challenge the interpretation as a riding academy. Mr. Pfabe stated that his wife was

advised that the Special Use Permit was an easier route, but then they discovered that this route led to something entirely different from their original intention for their barn. He reported that they then asked Mr. Friedrichson how to challenge the interpretation as a riding academy, which is where they are now. He noted that a riding academy is very specifically defined in the Code and that they do not fit that definition. He stated that they do not have 6 horses for compensation and also acknowledged that they could have 6 horses or 10 horses for compensation. But he emphasized that they do not and that they have asked the Zoning Office to come to the facility and look – he stated that he almost brought video that very clearly shows who owns all the horses. He stated that they are providing a service to the dressage community and that the reason they have 5 horses and not 8 horses is because a prominent dressage barn in Pine Plains closed down and wanted to use their facility. He stated that they sold 3 of their horses to another barn and that they may buy another horse by the end of the month. He noted that it is clear that their facility has the potential to be a riding academy but that it is not. Again, he noted that Mr. Friedrichson has not been out to the site and that Roger has not been out to the facility since the stalls have been filled. He stated that nobody from the Town has been out to the site and that he knows this because everyone who comes in and out of the site is videotaped. He again invited the Board members to come and visit his barn and facility – that he likes to show it off – that their hearts and souls are in the facility. He stated that they do not want a riding academy; rather they wanted a house in horse country New York where they could grow old and that's what they have. He stated that he was told by a member of the Planning Board to send a certified letter every month to the Town stating that they are not a riding academy and listing the names of who owns each of the horses – he stated that he's willing to do that. Again he invited the Board members to come to the facility.

Ms. Czech asked if the C.O. can be granted after the Special Use Permit expires in 4 months. Mr. Friedrichson responded no – either it is decided that it is a riding academy or that it is not a riding academy. He stated that the major issue is that if it is not a riding academy than he also does not need a site plan. Board member asked why Mr. Friedrichson cannot now make the decision that it is not a riding academy. Mr. Friedrichson stated that he cannot because nothing has changed. However, he also noted that if the ZBA directs him to make a decision, he can do so. And again he explained that the ZBA has the authority to interpret his decision, which is what the applicant is asking the Board to do.

Mr. Pfabe noted that there is no mention in the Code about whether he's allowed to advertise or whether the fact that he had his facility listed on a website made him a riding academy. Mr. Friedrichson stated that Zoning Administrator can make all sorts of decisions that can be taken to the ZBA for an interpretation if the applicant does not accept them. Mr. Dunn noted that the ad on the website is from January 27, 2006 which was the basis for Mr. Friedrichson's designation as a riding academy. Again, Mr. Pfabe stated that the definition in the Code says nothing about his ability to advertise and noted that they do not have a website. He asked how a description on a website changes the facility from a barn with 10 stalls to a riding academy. Board member stated that it was not the ad on the website that convinced the Board to grant the Special Use Permit; rather

it was the applicant who applied for the Permit which was granted. Board member asked what Mr. Pfabe is now presenting to the ZBA to demonstrate that the facility is no longer a riding academy.

Again, Mr. Pfabe stated that he wants it on the record that no one has visited the site, that Mr. Friedrichson has not visited the site, and that no member of the ZBA has visited the site, and that he is being judged on something that they have never seen. Board member stated that he has been to the site and that Mr. Vogt has also been to the site. Mr. Pfabe stated that no one has been inside the barn. Further, he stated that he never presented any evidence that they were a riding academy. Rather, he reiterated that they followed the route that they were advised to go down – that is, to apply for a Special Use Permit as a riding academy – which Mr. Friedrichson stated would be the easier route to take.

Mr. Pfabe stated that his facility is not a riding academy, has never been a riding academy, and never will be a riding academy. He stated that he has asked Mr. Friedrichson repeatedly to visit the site and he never has. He stated that the only person who has been out to the site is Roger Reid and it was at a time when there were 2 horses. Nonetheless, he noted that Mr. Friedrichson judges his property to be something that it is not. Again, he stated that the Code says nothing about advertising but says that a riding academy is 6 or more horses for compensation. He stated that he does not meet that definition.

Ms. Czech asked if Mr. Pfabe can ask the ZBA to rescind the Special Use Permit. Mr. Dunn stated that it can be rescinded based on a violation.

Mr. Friedrichson stated that you don't need to rescind the permit because it will expire by itself if it is not exercised. But he stated that that is not really the issue. Rather, he stated that the issue is whether or not the Town considers the facility to be a riding academy based upon the Code. Further, he noted that in counting the number of horses for compensation on a facility, it is not just the number of horses in the stalls, but also the number of horses on the trails or in the paddocks. Therefore, he stated that the ad on the website clearly indicates that there is the potential for having more than 6 horses for compensation on the site – references trainers and clinics and so on. Therefore, it is logical to come to the conclusion that it is a riding academy. He stated that the applicant can challenge any decisions he makes by asking the ZBA for an interpretation. He explained that he gave Mr. Pfabe the choice of applying for the Special Use Permit or going immediately to the ZBA for an interpretation.

Mr. Friedrichson stated that he does not think that making a site visit will give him any more information on whether or not it is a riding academy. Mr. Dunn stated that, therefore, the Zoning Administrator and the ZBA must rely on Mr. Pfabe's word. He noted that all his testimony has been given under oath, which must be taken into consideration. Mr. Friedrichson referenced the minutes of previous ZBA meetings during which Board members stated that they did not see any traffic at the site, which lobbies in favor of declaring it not a riding academy. A Board member noted that the

September ZBA minutes state that the Board had no problems declaring it not to be a riding academy and that time ran out and the Board did not vote on it.

Mr. Dunn suggested that the ZBA render an interpretation. Mr. Friedrichson stated that he will note for the Certificate of Occupancy that this is a private stable for private horses and not to be used for commercial purposes.

Ms. Czech read into the record the **Notice of Action of Board of Appeals – Request for an Interpretation:**

Whereas the applicant has offered testimony that they are not a riding academy and do not board 6 or more horses for compensation,

Now therefore be it resolved that the interpretation is in favor of the applicant.

VOTE TAKEN:

Don Sagliano – in favor

Tim Gerstner – in favor

Rob Maucher – in favor

Helen Czech – in favor

John Dunn – in favor

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:36 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the November 16, 2006, 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 21, 2006

This meeting of the Pleasant Valley Zoning Board of Appeals took place on December 21, 2006, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:31 p.m.

Members present: John Dunn
 Tim Gerstner
 Ronald Vogt
 Rob Maucher
 Lisa Rubenstein
 Christina Perkins
 Don Sagliano, Alternate

Members absent: Helene Czech

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #884 CATRINI - INTERPRETATION

Mr. Dunn reported that Mr. Catrini has withdrawn this application.

2. APPEAL #887 TOCCO - VARIANCE

Mr. Dunn reported that this appeal is a continuance from the last ZBA meeting and is an application for a variance from the minimum acreage requirement for existing substandard lot upon which the applicant proposes the location and construction of a single family residence. He noted that it has already been documented in the record regarding the notice in the newspaper and adjacent landowners being notified.

Mr. Bryce Di Nunno was present and had previously been sworn in. He stated that the existing lot is under 2 acres. He stated that they have hired a certified flood manager to certify all the lines on the documents that they will be submitted to the Planning Board. He stated that they are asking the ZBA for a variance from the minimum 2 acres.

Mr. Dunn asked about the size of the proposed house. Mr. Di Nunno stated that it is roughly 2.5 stories and is approximately 6500 sq. ft.

Mr. Vogt asked how long the applicant has owned the property. Mr. Di Nunno stated that Mr. Tocco purchased the 2 lots 2 years ago and combined them into 1 lot. Mr. Vogt asked about the size of the combined lot. Mr. Di Nunno estimated that one original lot was $\frac{3}{4}$ of an acre and the other was just over an acre. Board member noted that the application states that the combined lot is 1.15 acres.

Mr. Dunn noted that the dimensions of the house are 78' x 40'. Mr. Di Nunno noted that those dimensions include the 3 car garage.

Ms. Rubenstein raised the question of whether the two original lots pre-existed zoning. Mr. Vogt noted that the combined lot was created in the past 2 years. Ms. Rubenstein noted that the combined lot is 1.15 acres which is too small for the zoning in that area. She stated that

the only way the ZBA could approve this application is if it has been there prior to zoning. She stated that the question is whether the original individual lots existed prior to zoning and were, therefore, legal lots. Mr. Dunn confirmed that the ZBA has not received any documentation about whether the lots pre-exist zoning. Ms. Rubenstein stated that the title report should have that information. She informed Mr. Di Nunno that the applicant is asking the ZBA to approve a substandard lot and that the only way the Board can approve the appeal is if it was a legal lot at the time of zoning.

Ms. Rubenstein asked if there are other issues that the Board wants to bring to the applicant's attention at this time. Mr. Dunn stated that he does not see other issues that pertain to the ZBA. Ms. Rubenstein explained that as long as they can meet the setback requirements, the ZBA will consider the application but must know the answer to the question regarding the legal status of the original lots prior to zoning.

Mr. Sagliano noted that the combined lot is larger than adjacent lots in the neighborhood and, therefore, works with the character of the area.

This application is adjourned to subsequent ZBA meeting.

Ms. Rubenstein wondered why, if there are applications proposing construction on a substandard lot, it is not automatically required that they submit some sort of an abstract so that the ZBA can discover when the lot was created. She stated that it wastes the applicants' time and wonders if there's a better way to handle these applications. Mr. Friedrichson stated that the office can tell them.

Board also noted that the last time Mr. Di Nunno appeared before the Board he was told that he needed a notarized letter from the owner authorizing him to represent him at the meeting. Ms. Rubenstein stated that that should have been screened before the application was even put on the agenda. Mr. Friedrichson stated that, when someone who is not the owner applies for an appeal, that person must bring some documented evidence that he's authorized to file the appeal. However, he noted that he is unaware of any requirement that states that a person other than the property owner must have authorization to be heard by the ZBA. He stated that he's never heard of such a requirement. Ms. Rubenstein stated that sworn testimony is worthless from someone who is not authorized to represent the owner. Mr. Friedrichson noted that engineers speak for applicants often and noted that Mr. Di Nunno is an architect on this appeal. Board discussed the practice of allowing professionals to speak on behalf of the owner applicant.

3. APPEAL #888 ENNIS MHP - VARIANCE

Mr. Dunn reported that this appeal is for a property at Ennis Mobile Home Park, 19 Partridge Lane, and is for variances from minimum setback requirements for location of replacement mobile home on lot in mobile home park. The file contains:

- comment form from the Fire Advisory Board: no recommendation as there is no fire or safety issues and is strictly within the purview of the ZBA
- affidavit of publication in The Poughkeepsie Journal dated 12/14/06.

Mr. Dunn noted that since this property is in a mobile home park and is all under one ownership there are no adjacent property owners who need to be notified of this hearing.

Mr. David Pretak, owner, was sworn in. Mr. Pretak submitted a photo of the existing home, which is 12' wide with a patio on one side. He noted that the screened in porch is no longer there. He stated that there is a fair amount of space to the rear of this home and that they may be able to move the home farther back. If they are able to do that, there will be a little more space for parking. He pointed out that the off street parking will be across the front of the lot. He stated that the replacement home is the same size as the one on the left of this lot and will have a built-in porch. He stated that the distance on the right hand side is the same as now exists, that there's plenty of room in the back, and that the closest point on the left is 20'. He stated that there is plenty of room on this lot for a shed - that no variance will be required.

Mr. Pretak stated that he is asking for a 17' variance to the front, 12' variance to the right, 4' variance to the left, and none in the back.

Mr. Vogt once again asked that monument markers be installed in the park to clearly identify lot lines - these markers will provide a reference point from which to measure. Mr. Pretak stated that this particular lot does have a monument marker and that he has put the stakes in on this lot. Mr. Vogt reminded Mr. Pretak that he had previously stated that he would install these markers throughout the park.

Mr. Maucher asked why Mr. Pretak has not centered the home in the lot. Mr. Pretak explained that centering a home on a lot results in small yards on either side of the home. He explained that in most mobile home communities where the homes are centered, the residents end up using the space on one side of their home all the way up to the skirting of the adjacent home. Therefore, he stated that if you put the home more to one side, then the residents gain a reasonably sized yard on their own lot.

Mr. Maucher noted that fire safety is increased when there is more space between homes. Mr. Pretak stated that these homes are catty-cornered to each other and that by moving the home into the center of the lot, the distances would actually be decreased.

Mr. Sagliano asked how far away the house is on Lot 21. Mr. Pretak stated that Lot 21 is vacant and stated that there are no plans to put a home on it. Mr. Sagliano asked about moving the home back. Mr. Pretak stated that typically the homes in this community are about 10'-15' off the road. He stated that the home across from this lot is 13' off the road. He stated that there are some septic fields in the back on this lot. However, he stated that when they excavate they may find that they can move the home farther back, in which case they will do so. He reported on options for providing off street parking for this lot.

Public Hearing opened. No one spoke. Public Hearing closed.

4. APPEAL #881 GLOBAL TOWER LLC - SPECIAL USE PERMIT

5. APPEAL #882 GLOBAL TOWER LLC - VARIANCE

Mr. Neil Alexander was present.

Ms. Rubenstein stated that the Board received the visual impact study, that the Board members all received a copy of Mark Hutchins' report, the frequency engineer. She noted that they have not received anything yet from Pete Setaro. She spoke with Linda Murray, in Scott Volkman's office, and that they are waiting to confirm whether the improvements are within the bounds of the area that's on the lease. She stated that the Board is ready to set a

public hearing at which they can do a presentation for the public to include the visual impact study. She noted that following this hearing the Board would be in a position to do a declaration of environment impact and make a decision on the Special Use Permit.

Mr. Alexander stated that his goal is for the ZBA to schedule a public hearing for their January 07 meeting.

Ms. Rubenstein stated that the prevailing question that will come up at the Public Hearing is why this could not all be arranged to be on one tower instead of two - why is a second tower necessary. Mr. Dunn stated that previous testimony attests to the need for the second tower. Mr. Alexander stated that the existing tower is 190' with a lightning rod included. The fact that it is under 200' means that it does not need to be lit. He noted that a structure that is over 200' high must be lit with red blinking light at night and white during the day. Right now he stated that the existing tower has Cellular One, IWO, Verizon, and T Mobile. He stated that any additional carrier would have to be located on the tower at 165', which according to Mark Hutchins is below the 175' height at which frequency is functional. Therefore, he stated that they cannot add additional carriers to the existing tower. He noted that Singular went to the Planning Board in 2005 and got approval to co-locate at 153' on the existing tower.

Mr. Vogt stated that his question to the applicant will be why not take down the old tower and put up a new tower that will accommodate all the carriers. Mr. Alexander stated that the only way to accomplish this would be for the Town to tell him that they are willing to have a blinking red light all night long at the top of a tower that's taller than 200'. Ms. Rubenstein stated that she raised this question because it will probably be raised at the public hearing.

Mr. Alexander referred to Mr. Hutchins' report which addresses this question and suggested that Mr. Hutchins be present for the public hearing to answer this question in person. Further, Mr. Alexander noted that the Board knows his reputation is such that he must be consistent throughout the Hudson Valley, but that the public may not understand why the ZBA is sympathetic to the statements he makes. He stated that Mr. Hutchins' reports states that at 150' the signal will not extend to Nextel's proposed site in Clinton. Ms. Rubenstein reiterated that the "one tower solution" will be the public's main concern which he needs to be prepared to address. She noted that the applicant needs something at 175' and that the ZBA needs to be able to answer the public's concerns about whether it's a two tower or a one tower solution - and that's what the ZBA wants to have presented at the public hearing. She stated that the purpose of the public hearing is for Mr. Alexander to present his information, for the ZBA to solicit comments from the public, and for the ZBA to present the rationale for needing 175' in height.

Mr. Alexander stated that if the Town wants one Tower, it will have to be lattice and will have to have a wider girth. Ms. Rubenstein suggested having some photos to show what one tower looks like with an illuminated top. Mr. Alexander stated that he cannot think of a tower that exceeds 200' in height. Mr. Dunn suggested that, if Mr. Hutchins declines to attend the public hearing, the Board have something over his signature that explains the need for 175' and that a "one tower solution" would require a height in excess of 200' and illumination.

Mr. Alexander reported that there is a really tall tower with a blinking light on top in Pawling, Patterson line. He stated that on Route 22 you watch it for about 7-8 miles from the Trinity Pawling School to the A&P in Patterson.

Board discussed whether to hold a special hearing on a night other than the regularly scheduled ZBA meeting. Decision was reached to hold it at the next ZBA meeting on 1/25/07.

Board discussed where to post notices of the hearing:

- advertise in The Poughkeepsie Journal
- Post Office
- Library
- Town Hall
- Town website
- Sign on Mr. Mackey's property
- Notify adjacent property owners

Packets of information will be made available that include:

- visual impact report submitted on 11/22/06 (Exhibit 1)
- Mr. Hutchins' report
- Mr. Alexander's cover letter from June 27, 2006

The original application can be reviewed at Town Hall and at the Library.

Ms. Rubenstein will e-mail Mr. Hutchins regarding attending the special meeting or providing a written statement regarding the need for 175' in height.

Mr. Alexander stated that landlord tenant issues are resolved, that Mr. Mackey has been present at all the meetings. Ms. Rubenstein e-mailed Mr. Setaro and Ms. Murray stating that the ZBA would probably want them present at the special hearing. Mr. Dunn will encourage Scott to attend.

DISCUSSION

1. TOWN BOARD - LEAD AGENCY

Mr. Dunn reported that he has a request from the Town Board that they be declared lead agency regarding the development of a salt storage and highway equipment storage facility in the Town of Pleasant Valley Highway Garage complex on an 8.57 acre parcel located on Shero Road. This project is subject to an environmental review under SEQRA, and the Town Board is recommending a coordinated review. Further the Town Board has determined that this is an unlisted action and states that it wishes to be lead agency for the project review. The Town Board requests the ZBA's agreement that the Town Board be designated lead agency.

Mr. Dunn: **RESOLUTION TO CONSENT TO THE DESIGNATION OF TOWN BOARD AS LEAD AGENCY; SECONDED BY L. RUBENSTEIN; VOTE TAKEN AND APPROVED 7-0-0.**

2. APPEAL #888 ENNIS MHP - VARIANCE

Mr. Dunn opened discussion on this matter. No one spoke.

Ms. Perkins read the worksheet into the record. The setbacks are: 17' in the front, none in the rear, 12' on the left, and 12' on the right. The ZBA determines that the benefit to the applicant is greater than any detriment to the health, safety, and welfare of the neighborhood or community.

Ms. Perkins: **MOTION TO GRANT THE VARIANCES; SECONDED BY L. RUBENSTEIN; VOTE TAKEN AND APPROVED 7-0-0**

3. MINUTES

August '06, September '06, and November '06 minutes will be reviewed and approved at a subsequent ZBA meeting.

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the December 21, 2006, 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