

PLEASANT VALLEY ZONING BOARD OF APPEALS

January 25, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals too place on January 25, 2007, 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
 Rob Maucher
 Lisa Rubenstein
 Don Sagliano, Alternate

Members absent: Helene Czech
 Ronald Vogt
 Christina Perkins

Also present: Dieter Friedrichson, Zoning Administrator

3. 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.

Mr. Bryce Di Nunno, architect, was previously sworn in and stated that they submitted the abstract of deed to the Town Planning Board and supporting documents that demonstrate that the two lots did exist as legal lots before they were combined. Mr. Dunn reviewed the documents and stated that they appear to be in order.

Mr. Di Nunno stated that Mr. Knapp is having problems finding an available surveyor.

Mr. Maucher inquired whether the third lot is part of the application. Mr. Di Nunno explained that it is not. Board reviewed the map and Mr. Di Nunno pointed out the steep drop down to the creek and the 100 year flood zone. Mr. Di Nunno stated that the combined lots are 1.15 acres and that this calculation excludes the 10' easement along the road. He noted that the house is setback 100' from the wetlands and that the site meets all the other required setbacks. He pointed out the only site on the map where the house can be located.

Ms. Rubenstein clarified that the applicant is applying for an area variance in the 2-acre zoning district.

Mr. Di Nunno stated that he advertised for this Public Hearing.

Mr. Dunn: **MOTION TO OPEN PUBLIC HEARING; SECONDED AND UNANIMOUSLY APPROVED**

Ms. Jennifer Horgan, 311 Creek Road, was sworn in. She stated that her property adjoins this site. She stated that she has always been under the impression that the lot could not be

built on and asked what testing was done on the water. She stated that she had always heard that when it was perc tested the results showed that it could not be built on because of the lot size. She stated that she's lived next door since 1967. She asked for clarification of the application and what the plans are.

Mr. Dunn explained that there are two lots that are already combined, that the combined lot is less than the required 2 acres; therefore the applicant is applying for a variance. He stated that the applicant has proven that the lots, individually, pre-dated Zoning, were therefore legal lots, which grants the applicant the right to appeal for a variance. He stated that Mr. Di Nunno has provided substantial evidence that the original individual lots pre-existed Zoning and are legal.

Mr. Di Nunno stated that they already have Health Department approval for the septic and the well.

Ms. Rubenstein explained the aspect of the Zoning Code that grants the applicant the right to appeal for a variance. She reiterated that the lots existed prior to Zoning. Mr. Di Nunno noted that 75% of the lot is beautiful but unusable land because it is all in the flood zone.

Ms. Horgan said that she is concerned about the water. She stated that they had always been told that because of the size of the lot and the wetlands, a well and a septic could not be maintained, and therefore the lot could not be built on. Mr. Di Nunno reported that they have tested the water on two other pieces of property down the road and did find some problems, none of which are insurmountable.

Mr. Dunn: **MOTION TO CLOSE PUBLIC HEARING; SECONDED AND UNANIMOUSLY APPROVED.**

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

Mr. Neil Alexander, attorney for the applicant, and Mr. Charles Laurette, were present.

Ms. Rubenstein stated that a Public Hearing has been scheduled for tonight for both appeals. She reported that the Board received a letter dated 1/24/07 from Morris Associates and a letter dated 1/19/07 from Global Tower LLC. She noted that the letter from Global Tower is in response to the Board's request for an explanation regarding the need for a second tower. She noted that Global Tower is now saying that their tower needs to be different and taller from what was originally proposed. She noted that the original application is for 175' monopole and now everything all together it will be 194'.

Further, Ms. Rubenstein pointed out that the Public Hearing was advertised for comment on a proposed 175' pole. She stated that if Global Tower does not amend their application to the new height being requested and if the Board approves 175', she would not be surprised that down the road to find out that it will be taller. She noted that this happened with the other one – she stated that she does not think that the Board approved 194'. Mr. Alexander confirmed that the Board did approve 194'.

Ms. Rubenstein requested that the visual EAF impact studies be amended to show the proposed 194'.

Mr. Alexander explained the history of the existing tower. Ms. Rubenstein reviewed the file and stated that he is correct that the Board did approve 194'. Mr. Alexander explained the 2 versus 1 tower process, that they looked at the current need and the future need. He stated that 4 carriers exist, present there are 2 (Singular and Nextel), and that Statewide Wireless Network (SWN) is in the future. He noted that SWN is looking for tall towers in the area, and explained that it is the New York State Office of Information and Technology and is exempt from local zoning.

He stated that they tried to shorten the one tower solution by doing inverts, that their concern was that they would make the one tower solution look inordinately tall. He noted that Mark Hutchins agreed with their comparison, that it was a fair market comparison. He stated that they need 175', but SWN is floating out there. He suggested that if the Town does not want to end up with a third tower, given that SWN is exempt from local zoning, they are looking out for the Town's interests. He stated that they will build the tower to 175 and engineer it structurally so that if SWN wants to use it, the extra 10' of steel and extra 19' of antennas can be expanded. He stated that they wanted to leave the Town with flexibility. He stated that they are giving the Town the capability, if SWN decides to use it, to have the solution in place and stop them from putting up a third tower.

Ms. Rubenstein asked if they would have an objection to revising the EAF to show the additional height and capability to go to 194'. She stated that the Board is not asking them to float a balloon. Mr. Laurette pointed out that as a result of receiving calls from SWN they have made a 10' expandable to accommodate them. Ms. Rubenstein again asked them to redo the visual impact study. Mr. Alexander stated that one can draw a straight line across in the photo. Ms. Rubenstein explained that the only potential issue is the way it looks and that the Board must document that it carefully reviewed the visuals. Mr. Alexander and Ms. Rubenstein discussed the pros and cons for redoing the visual impact studies and the various documents that are already on file.

Mr. Laurette stated that the plan is for 185' to the top of steel and antennas to 194' with the visual impact at 194'. Ms. Rubenstein stated that the Board's concern is the height of what the Town is looking at. Mr. Alexander stated that there will be 4' wide steel to a height of 185' and 3' wide whips to a height of 194' – that the whips will not be visible from a distance. Ms. Rubenstein pointed out that there are people, neighbors, who will see the whips. She stated her desire to be able to respond and document to Town residents when they ask about the tower that, yes, the Board deliberated carefully on the structure and on its impact. Mr. Alexander noted that SWN may say that they want 250'. Ms. Rubenstein stated that she wants legal advice on the SWN issue.

Mr. Laurette stated that they were trying to give a good solution and that they regularly build towers with expandable capability. Ms. Rubenstein pointed out that it works to their advantage to have the Board review now the impact of the additional height in case that they need it in the future. Mr. Alexander stated that there is some value, strategically, if the Board is looking at the visual impact of 194' for users who may apply in the future. Mr. Dunn noted that building this tower with the increased height would be less detrimental than SWN building its own tower to whatever height it needs. Mr. Maucher asked what would prevent SWN from doing that anyway. Mr. Dunn and Ms. Rubenstein agreed that nothing would. Mr. Maucher stated that he does not want to consider this application based on a possibility.

Mr. Laurette stated that Global Tower has a master licensing agreement with SWN and that they are going on a lot of their towers now. He stated that SWN does not want to build its own towers because it is costly. Ms. Rubenstein stated that, therefore, it's a realistic probability that this tower will be 194'. Mr. Laurette stated that it could or could not – it is not known at this time.

Ms. Rubenstein asked again that they redo the visual EAF. Mr. Alexander asked that the Board be prepared to act at the next meeting and that the expandable aspect not be just for local zoning-exempt carriers. Ms. Rubenstein explained that no additional study would have to be done if the Board has already reviewed to 194'. Mr. Alexander stated that he does not want to have to come back to the Board for approval. Ms. Rubenstein stated that the Board would not have the authority to do that, but that it would stream line their process if they need to expand the height in the future but that the Board cannot bind itself in the future to an application that does not exist. She did state that the Board can document in a resolution that it evaluated a tower at 194' and make a finding about that visual impact, which they can reference in any future application.

Mr. Alexander agreed to provide the Board with an amended visual EAF study. Ms. Rubenstein cautioned that no guarantee can be given regarding an approval. Mr. Alexander stated that he is asking for a guarantee that the Board will take action. Mr. Dunn stated that as long as the Board has a quorum, there will be action. Ms. Rubenstein stated that it also depends on there being a completed draft resolution.

Ms. Rubenstein stated that Mark Hutchins and Morris Associates had some questions and that the Board will want to hear from them.

Ms. Rubenstein noted that the ZBA circulated for lead agency in September 2006 but never actually declared themselves lead agency - **MOTION TO CONFIRM THE ZBA AS LEAD AGENCY FOR THIS PROJECT; SECONDED R. MAUCHER; VOTE TAKEN AND APPROVED**

- **Tim – in favor**
- **Don – in favor**
- **Rob – in favor**
- **Lisa – in favor**
- **John – in favor**

PUBLIC HEARING OPENED

Mr. Randall Gregg Paulk, 191 Barkit Kennel Road, Pleasant Valley, NY, was sworn in. He stated that he is the IT manager for the Andersen School and that his office is on the Hudson River. He stated that he's opposing an additional tower being put on the ridge behind his house and next to his property because of the negative visual impact it has on the beauty of the community. He stated that across the Hudson from the School, they allowed a tower to be put up and that there are now 8 towers on that ridge. He stated that the same thing will happen in Pleasant Valley. He stated that the microwave antennas, mentioned by Mr. Alexander, are huge and noted that Mr. Alexander had said that the towers would be built to support those antennas and that there had already been some interest in them.

Mr. Paulk stated that he would much rather see one taller tower with a light on top of it on the ridge than have multiple towers. He stated that once you allow the second tower to be put up, you set a precedent that will allow additional towers to be put up.

He stated that he knows that the towers can be built tall enough to accommodate all the cellular carriers and that he used to work for Dobson. He stated that he believes in competition, that it helps to drive down the price for everyone. But he noted that the applicant is not in competition with anybody – they own the towers.

Mr. Paulk asked whether any of his neighbors received a letter notifying them of this hearing. He stated that he is the only adjoining property. Ms. Rubenstein stated that the hearing was published in The Poughkeepsie Journal on 1/17/07; public notice was posted at the Town Hall, the Library, and the Post Offices at Salt Point and at Pleasant Valley. She listed the names of adjacent property owners who were mailed notice on 1/11/07. Mr. Paulk stated that he will go door to door and hand out the flyers if the Board will not mail letters to everyone on the street. Mr. Dunn explained the Board's obligation to notify contiguous landowners and acknowledged that there will be people elsewhere in the Town who will be impacted visually by the proposed tower. Mr. Paulk asked that the hearing be adjourned until he has the time to personally notify and invite every neighbor on the road. Mr. Dunn confirmed that this application will be adjourned until next month.

Mr. Paulk reviewed the photo simulations of the single tall tower. He requested that they use the tree design because it looks like a tree and it costs them a whole lot more money. He reiterated the likelihood of setting a precedent for multiple towers to be put up on the ridge. He also stated that he does not have a problem with a tall tower being lit 24-7.

Mr. Alexander stated that the second tower requires only one variance; however, the one tower solution requires 3 variances. Mr. Laurette stated that the one tower will require daytime and nighttime protection; there will be a white strobe during the day and either a white low intensity strobe during the night or a red strobe during nighttime operations. Mostly likely, he stated that it would be a day white strobe and a red night strobe with 3 steady burning incandescent side markers that will be located at 50% of the tower height, which is 120'. He stated that the side markers will stay on during nighttime operations solidly lit.

The Public Hearing for both appeals is adjourned to the February 2007 ZBA.

DISCUSSION

1. APPEAL #887 – TOCCO VARIANCE

Mr. Dunn read the worksheet into the record. Requested lot size variance is .85 acres.

- “Taking into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant, the Zoning Board determines that the benefit to the applicant is greater. Therefore the above factors when considered together balance in favor of granting the variance.”

Mr. Dunn: **MOTION TO GRANT THE VARIANCE**

Discussion: Ms. Rubenstein added to the motion that the applicant provided documentation that establishes that the lot predated Zoning and that there were two separate lots that were mutually exclusive that were merged, which also reduced the amount by which the merged lot was undersized. She stated that the primary reason for granting the variance is that it was two lots created before zoning that were merged to reduce the amount of the nonconformity. Further, she noted that according to Town custom undersized legal lots that predate zoning can be built upon.

Mr. Dunn: **MOTION TO APPROVE A .85 ACRES VARIANCE IN AN R-2 ZONE**

SECONDED BY R. MAUCHER

Ms. Rubenstein: **MOTION AMENDED TO INCLUDE:
“BASED UPON THE APPLICANT’S SUBMISSION OF DOCUMENTATION THAT
THE LOT WAS LEGAL PRIOR TO ZONING AND THAT TWO SUBSTANDARD
LOTS WERE MERGED TO REDUCE THE NON-CONFORMITY”**

RESECONDED BY R. MAUCHER

Discussion: Mr. Maucher asked when Mr. Tocco merged the lots. Ms. Rubenstein stated that she does not think it matters. Mr. Maucher explained that his question is about whether someone can buy a substandard lot and build upon it. Ms. Rubenstein stated that these lots were legal before zoning; therefore the owner had the right to convey it to a new owner. Further the new owner has the right to build upon it. Mr. Dunn stated that it’s the entity not the ownership. Ms. Rubenstein stated that it is the fact that it’s a substandard lot that legally existed prior to zoning. Mr. Maucher asked how this situation differs from a previous appeal. Ms. Rubenstein and Mr. Friedrichson explained that the previous appeal was for road frontage requirements.

Mr. Maucher asked about the size of the house. Ms. Rubenstein stated that it is not an issue for the ZBA. Mr. Friedrichson stated that there is a maximum on the height and the number of stories and that it does not need a variance for the height. He suggested a condition be put on the application to state that it will **comply with all other rules, codes and regulations**. He stated that there are issues with the wetlands and the flood plains and that the applicant already knows that he will need a wetlands permit because the SDS will be partially in the 100’ regulated area. He stated that the map shows that the entire property is in the flood plain. However, he stated that the applicant went to a flood plain consultant who determined by way of a surveyor that it really isn’t, that the flood plain maps are inaccurate. He explained the process by which the correction is made via a Letter of Map Amendment from FEMA.

Ms. Rubenstein: **MOTION REAMENDED TO INCLUDE:
“THAT THE APPLICANT WILL COMPLY WITH ALL OTHER CODES, RULES
AND REGULATIONS”**

Mr. Friedrichson noted that the applicant also needs approval for his driveway, that there are issues of steepness.

VOTE TAKEN AND APPROVED

- **TIM = IN FAVOR**
- **LISA = IN FAVOR**
- **ROB = IN FAVOR**
- **DAN = IN FAVOR**
- **JOHN = IN FAVOR**

2. MINUTES

Mr. Dunn: **MOTION TO APPROVE MINUTES AS SUBMITTED FOR AUGUST 2006 ZBA MEETING; SECONDED BY D. SAGLIANO; VOTE TAKEN AND APPROVED 5-0-0**

Mr. Maucher: **MOTION TO APPROVE MINUTES AS SUBMITTED FOR MAY 2006 ZBA MEETING; SECONDED BY J. DUNN; VOTE TAKEN AND APPROVED 5-0-0**

Mr. Dunn: **MOTION TO APPROVE MINUTES AS SUBMITTED FOR DECEMBER 2006 ZBA MEETING; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 5-0-0**

Mr. Gerstner: **MOTION TO APPROVE MINUTES AS CORRECTED FOR NOVEMBER 2006 ZBA MEETING; SECONDED BY J. DUNN; VOTE TAKEN AND APPROVED 5-0-0**

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

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the January 25, 2007, 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 1, 2007

This **Special Meeting** of the Pleasant Valley Zoning Board of Appeals took place on March 1, 2007, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:55 p.m.

Members present: John Dunn
 Helene Czech
 Rob Maucher
 Christina Perkins

Members absent: Tim Gerstner
 Ronald Vogt
 Lisa Rubenstein
 Don Sagliano, Alternate

1. APPEAL #877 WHITE V. ZBA RE: ARTICLE 78

Mr. Dunn reported that the White Appeal #877 had been previously denied by the ZBA and that the Chairman of the ZBA met with Town counsel, the Town Supervisor, the Building Inspector, and the counsel for the applicant. He reported that they reached an agreement with regard to the previous denial which will bring the property into conformity with the Town Code.

Mr. Dunn read into the record (attached) the **Stipulation and Order of Consent, Richard A. White Petitioner against Pleasant Valley Zoning Board of Appeals, Index No. 1005/5383**. He noted that the Article 78 will be dismissed pending approval of the Stipulation and Order of Consent.

Ms. Perkins: **RESOLUTION TO APPROVE THE STIPULATION AND ORDER OF CONSENT**

Whereas, on April 27, 2006, the Town of Pleasant Valley Zoning Board of Appeals issued a determination in the matter of Richard White with respect to an application for a variance, which was denied by the Zoning Board of Appeals; and

Whereas, by Notice of Petition and Petition the applicant commenced an Article 78 proceeding challenging the determination and seeking to nullify and invalidate the determination and to direct the ZBA to grant the requested variance; and

Whereas, the ZBA consulted with the Attorney to the Town with respect to this litigation, and

Whereas, the ZBA has considered a Stipulation of Discontinuance of the Article 78 proceeding upon the terms set forth in the Stipulation annexed hereto;

Now, therefore, be it resolved, the Attorney to the Town and the ZBA Chairman or Vice Chairman are hereby authorized to enter into such Stipulation in substantially the same form as annexed hereto to discontinue the Article 78 proceeding.

Dated 2/22/07

SECONDED BY R. MAUCHER

VOTE TAKEN AND APPROVED 4-0-0

John Dunn, Chair	In favor
Helene Czech	In favor
Robert Maucher	In favor
Christina Perkins	In favor

MEETING ADJOURNED BY CHAIRMAN DUNN AT 8:15 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the March 1, 2007, 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 22, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on March 22, 2007, 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
 Rob Maucher
 Helene Czech
 Ronald Vogt
 Christina Perkins

Members absent: Lisa Rubenstein
 Don Sagliano, Alternate

Also present: Dieter Friedrichson, Zoning Administrator

1. MINUTES

Ms. Perkins: **MOTION TO APPROVE THE MINUTES AS WRITTEN OF THE ZBA SPECIAL MEETING ON 3/1/07; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 6-0-0**

Mr. Gerstner: **MOTION TO APPROVE THE MINUTES AS AMENDED OF THE ZBA MEETING ON 1/25/07; SECONDED BY C. PERKINS; VOTE TAKEN AND APPROVED 6-0-0**

Mr. Dunn: **MOTION TO APPROVE THE MINUTES AS WRITTEN OF THE ZBA MEETING ON 9/28/06; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 6-0-0**

2. APPEAL #889 – HARDEN - VARIANCE

Mr. Dunn reported that the applicant is applying for a variance from the minimum setback from the center of the road. He noted that Ms. Ginda Harden proposes to construct a sunroom addition to her home. He stated that she has requested a 19' variance.

Mr. Dunn stated that the file contains:

- Notice of publication in The Poughkeepsie Journal
- Referral from the Town Planning Department listing this application as a matter of local concern and offering no opinion
- Comment form from the Pleasant Valley Fire Advisory Board offering no recommendation as the application represents no fire or safety issues
- List of adjacent property owners who have been notified of this hearing and this appeal

Ms. Ginda Harden, 1400 Route 44, Pleasant Valley, NY was sworn in and stated that she has a front entry way that will be removed and a 10' x 18' sunroom will be constructed in its place.

Ms. Perkins asked for clarification on the setback from the middle of the road. Ms. Harden stated that it is 61' from the center of the road to the edge of the sun porch, and it is 71' to the edge of her house. Mr. Dunn noted that Ms. Harden's application requests a 19' variance but that she only needs a 14' variance. Mr. Friedrichson clarified that the required setback is 80', therefore the required variance is 19'.

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

3. APPEAL #890 DIMETRO – VARIANCE

Mr. Dunn reported that Mr. DiMetro is requesting an area variance in order to build a garage 4' from his lot line. He noted that the application requests a 9' variance but that, in fact, he needs an 11' variance. Therefore, the application needs to be amended.

Mr. Dunn stated that the file contains:

- Referral from the Planning Board with a positive recommendation "as long as it is verified that the proposed garage is for residential use."
- Affidavit of publication in The Poughkeepsie Journal dated 3/16/07
- A notarized letter from a neighbor, Mr. Curt Moore, 273 Smith Road, that states: "Please let this letter serve as notice that we are the owners of the residence of 273 Smith Road and hold no objection to the DiMetro's of 267 Smith Road erecting a garage type building close to and up to the property line dividing our two properties." Mr. Dunn noted that the letter is signed by Curt Moore and is dated and notarized.
- Referral from the Fire Advisory Board: no recommendation as there are no fire or safety issues.

Mr. James DiMetro, 267 Smith Road, Pleasant Valley, NY was sworn in. He pointed out the property on the aerial map and stated that he plans to use the garage for his cars. He noted the high hemlock hedge across the front and the back and that there's a stockade fence up to the barnyard. He pointed out the driveway and noted that area is already macadam where they currently park the car and the truck, which is where he is proposing to put the garage. He stated that he needs to put the garage in that location so that he has adequate turning radius to maneuver a horse trailer. He stated that it will not be visible from the road and he plans to construct it with materials that will match the house.

Mr. Gerstner asked about the application which states a 3 bay garage but the photo shows 2 bays. Mr. DiMetro stated that they are applying for a 2 bay garage. Mr. Gerstner pointed out the discrepancy in measurements – in one place it says 31' x 36' and in another place it says 30' x 36'. Mr. DiMetro stated that the accurate measurement is 31' x 36'.

Mr. Vogt asked about rotating the structure in order to move it farther from the property line. Mr. DiMetro explained that access to the paddocks and the location of the stockade fence makes that configuration difficult.

Public Hearing open. No one spoke. **Public Hearing closed.**

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

5. APPEAL #882 – GLOBAL TOWER LLC – VARIANCE

Board noted that the Public Hearing was adjourned from the last ZBA meeting, and Mr. Dunn asked if any member of the public wished to speak on this application.

No one spoke.

Public Hearing closed.

DISCUSSION

1. APPEAL #889 – HARDEN – VARIANCE

Board noted that the addition will improve the property.

Ms. Perkins read the worksheet into the record. The type of variance sought is from Section 98-12A and is 19' in the front. The benefit to the applicant is greater when weighed against the detriment to the health, safety and welfare of the neighborhood or community.

Ms. Perkins: **MOTION TO GRANT THE VARIANCE; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 6-0-0**

2. APPEAL #890 – DIMETRO – VARIANCE

Ms. Czech read the worksheet into the record. The type of variance sought is from Section 98-12 and is 11' on the right. Noted that the stockade fence poses difficulties to any alternative location for the garage. The benefit to the applicant is greater when weighed against the detriment to the health, safety and welfare of the neighborhood or community.

Ms. Czech: **MOTION TO GRANT THE VARIANCE; SECONDED BY T. GERSTNER**

Discussion: Mr. Vogt noted that this is a substantial variance and that there is adequate space on the property to locate the garage so that it is in compliance with the setback requirements. Ms. Czech noted the probable significant financial expenses that would result from making changes to the property necessary to locate the garage elsewhere. Also, she noted that the detriment to the health, safety and welfare of the neighborhood is not greater by putting the garage where it is planned at the end of a black top that already exists. Mr. Vogt reiterated his opinion that there are other options. Ms. Czech stated that, although there are other options, the impact of such options is too great and would make it more difficult for the applicant. Mr. Dunn reviewed the impact of moving the garage into the paddock. He also mentioned the letter of endorsement from the current neighbor, while noting that future neighbors may not share that endorsement. Also, he also pointed out the benefit that the proposed location is at some distance from the other buildings.

VOTE TAKEN AND APPROVED 5-1-0

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

5. APPEAL #882 – GLOBAL TOWER LLC – VARIANCE

Mr. Neil Alexander was present.

Mr. Dunn: **MOTION OF SEQRA NON-SIGNIFICANCE.** Mr. Dunn read into the record (attached) the Notice of Determination of Non-Significance pursuant to the SEQRA.

SECONDED BY C. PERKINS

VOTE TAKEN AND APPROVED 6-0-0

Mr. Dunn reviewed the revisions, as created in consultation with Ms. Rubenstein, to the resolution to approve the appeals. He listed the following changes:

1. the history of the balloon float
2. photos taken from 13 vantages
3. dates of the public hearings
4. ZBA reviewed a visual analysis and determined that the impact of the proposed tower is not significant in light of the benefit to the community

Mr. Dunn: **RESOLUTION TO APPROVE A SPECIAL USE PERMIT AND AREA VARIANCE Sections 98-27.2-4(A)(2) and 98-27.2-5(C) (original attached)**

SECONDED BY T. GERSTNER

Discussion: Address of the site is corrected to read 362 Pine Hill Road, Pleasant Valley, NY. The requirement of a driveway permit is removed. Mr. Alexander noted that Conditions 1 through 7 and 9 are before building permit and Condition 8 is after building permit once they are commercially operating. Mr. Gerstner asked if the bond for removal is included in escrow fees. Mr. Alexander stated that it is in the letter of credit for removal. Discussion regarding Condition #5 – decision reached to leave it as it is currently written.

VOTE TAKEN AND APPROVED 6-0-0

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

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the March 22, 2007, 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 26, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on April 26, 2007, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:30 p.m.

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

Also present: Dieter Friedrichson, Zoning Administrator
 Don Sagliano, Alternate

1. **APPEAL #891 TODD – VARIANCE**

Mr. Dunn stated that this is an appeal for a 15' variance from minimum side setback requirement – on the right side - for location and construction of a residential garage. He reported that the file contains:

- Referral from the Planning Board: negative recommendation as the variance sought is too great and there may be an alternative location for the proposed structure
- Notice of publication in The Poughkeepsie Journal dated 4/21/07
- List of adjacent property owners to whom notification has been sent

Mr. Dunn noted that Mr. Todd was denied a building permit and is requesting an area variance.

Mr. Jim Todd, 44 Eleanor Drive, Pleasant Valley, NY was sworn in. He explained that, due to the lay of the land and the presence of wetlands on his property, there is nowhere else he can locate the garage on his property – it is the only available spot on the whole property.

Mr. Dunn asked Mr. Todd to post the yellow sign as he did not see the sign. Mr. Todd stated that he was not told when he should put the sign up. He stated that he did have stakes out locating the spot. Mr. Dunn stated that he did not see stakes when he visited the site. Mr. Todd stated that they got plowed down.

Mr. Dunn asked if there is any other possible location for the garage. Mr. Todd stated that due to topography there is no other site and everything else that is level is in wetlands.

Mr. Vogt asked how far from the proposed garage to the neighbor's residence. Mr. Todd estimated that it is at least 200 yards.

Public Hearing was opened.

No one spoke from the public.

Ms. Rubenstein asked if this is proposed as a two car garage. Mr. Todd responded yes. Ms. Rubenstein asked if it could be moved up a little so that it is not right on the lot line or if it could be turned. Mr. Todd stated that if it were moved out it would be across the driveway. And that it cannot be turned because of a steep hill. He also stated that the other level area on the other side is the septic.

Public hearing was closed.

2. APPEAL #892 CENTRAL HUDSON – VARIANCE

Mr. Dunn stated that this appeal is for a variance from the maximum 50% increase limitation in size of non-conforming use (electric service utility) on the parcel. He noted that the file contains:

- Referral from the Dutchess County Department of Planning and Development: no position as it is a matter of local concern
- Referral from Planning Board: positive recommendation
- Affidavit of publication dated 4/21/07 in The Poughkeepsie Journal
- List of adjacent property owners who have been notified of this meeting

Patrick Harder from Central Hudson, 284 South Avenue, Poughkeepsie, NY 12601 was sworn in. Mr. Harder stated that they are planning an expansion of their Tinkertown substation to add a second transformer and second line tap off of a transmission line going by there in order to increase its capacity to serve the local community as well as increase the reliability of electrical service in the area.

Mr. Harder stated that they have appeared at a couple of Planning Board meetings and have been referred to the ZBA for an interpretation of the 50% rule of the non-conforming use. Ms. Rubenstein asked for clarification regarding the purpose of the appeal – whether it is for an interpretation or a variance. Mr. Dunn asked for clarification also. Mr. Harder stated that they are requesting a variance.

Ms. Rubenstein noted that Central Hudson submitted a letter stating that they think they don't need a variance and asked if the ZBA has received comments from its attorney in response. Mr. Dunn stated that he received a response from the attorney this morning. Also, Mr. Dunn stated that Central Hudson, as a public utility, is not held to the same standard of proof of hardship.

Mr. Dunn stated that the letter from Mr. Volkman is dated 4/26/07 (original is on file), references case law, and is not marked as confidential. Mr. Volkman writes that:

“the utility must demonstrate that denial of the variance would cause unnecessary hardship but not in the sense required by other applicants. It should be noted, however, that where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced.”

Mr. Vogt inquired if this is an open structure or a closed building.

Ms. Rubenstein stated that Mr. Volkman did not respond to Central Hudson's statement that they do not need a variance because they are not a non-conforming use. She asked if they need a variance and stated that the ZBA does not have any guidance from the attorney on this question.

Mr. Harder stated that the Zoning Code is unclear. Further, he stated that if he considers the transit of the distribution lines as part of the non-conforming use, then the way he calculates the area, no variance is required. Ms. Rubenstein acknowledged that Central Hudson has stated its case for not needing a variance. Mr. Harder stated that the Planning Board has decided that Central Hudson does need one based on similar circumstances.

Ms. Czech noted that the letter from Planning Board Chairman Labriola refers to the Zoning administrator's consideration of the requirement for an area variance. Mr. Friedrichson stated that Town Law 274 says that if the necessity of a variance arises it does not need the Zoning administrator's decision.

Ms. Rubenstein asked if there is an EAF on this appeal.

Mr. Gary Courtney, Central Hudson, was sworn in. He stated that Ms. Salvato told them that they need to apply for an area variance. Further, he stated that, after Central Hudson wrote its letter stating their opinion that they do not need a variance, Ms. Salvato informed them that they must come before the ZBA and that all action before the Planning Board would stop.

Ms. Rubenstein again asked if there is an issue about whether a variance is needed. She stated that if Central Hudson states that it does not need one, she does not want the ZBA to review the appeal, make a decision, and then be sued by Central Hudson at a later date because they do not like the decision. Therefore, she stated that either Central Hudson will agree that they need a variance, or they can decide to wait for the ZBA to get a response from the Board's attorney to their letter. She reiterated that she does not want the ZBA to be in a position to be sued at some later date – either the ZBA has jurisdiction or it does not. She asked if Central Hudson agrees that it needs a variance and wants the ZBA to proceed.

Mr. George Walsh, attorney for Central Hudson, was present. He stated that the issue is the interpretation of the Zoning Code and the 50% limitation. Ms. Rubenstein stated that she understands that they may have a totally legitimate issue but asked again if they are agreeing that they need a variance or if they want to hear from the ZBA attorney. Mr. Walsh stated that the Planning Board and the Planning Board's attorney believe that Central Hudson needs to apply for a variance and that Central Hudson has reluctantly accepted that interpretation. He noted that the Code provision was not clear. Ms. Rubenstein stated that the ZBA does not disagree. Mr. Courtney stated that, yes, Central Hudson is here to seek an area variance.

Ms. Rubenstein noted that this is an application for a variance that is part of a larger project and asked if there is an EAF that has been prepared by the applicant. Mr. Dunn stated that the file does not include an EAF. Mr. Courtney and Mr. Harder stated that they have completed Part 1 of the EAF and that the Planning Board is lead agency on this. Ms. Rubenstein stated that the Planning Board has not circulated to the ZBA and suggested that this is an uncoordinated review. Ms. Rubenstein stated that the ZBA received nothing and knows very little about their project.

Mr. Harder provided the Board with maps of the project. He explained that the existing fenced-in area is 55' long by 60' wide. They are expanding that to 140' straight back on the property while maintaining the same width. They are removing the existing breakers, adding a new breaker enclosure, and adding a second transformer and lines out.

Mr. Vogt asked if they are adding a new corridor of lines. Mr. Harder explained the distribution lines on the map. He pointed out the 150' wide transmission corridor on the map.

Mr. Harder stated that the circuit exits are going to be changed from overhead to underground.

Ms. Rubenstein asked about a building on the site. Mr. Harder explained that it is a fenced-in gravel area that is being increased to add the new transformer. Mr. Harder explained all the expanded and changed features on the map.

Ms. Rubenstein asked for a copy of the EAF. Mr. Harder provided a copy to the Board. Ms. Rubenstein asked about the Planning Board's review and if they are close to doing a negative declaration. Mr. Harder stated that they have done a sound analysis and stated that he did not know that they needed to provide the ZBA with documents and that they were told to keep it simple. Ms. Rubenstein stated her understanding that they did not know that the ZBA is an involved agency. She explained that either the ZBA must be named as an involved agency or this becomes an uncoordinated review and the ZBA must issue its own negative declaration before it can take action.

Ms. Perkins commented that the appeal states that the variance is not substantial but that she considers it to be substantial. Further, she noted that they did not respond to the question regarding other feasible methods.

Mr. Vogt asked what happens to the capacity for this substation and surrounding community if they don't add the second transformer. Mr. Harder stated that the equipment on the site will become overtaxed to the point where it will fail. If this happens, Central Hudson will have to role a mobile substation in there on a temporary basis until they can replace the existing equipment.

Mr. Vogt asked what percentage increase the second transformer will provide. Mr. Harder stated that the second transformer is the same size as the existing transformer which does not double the capacity of the station. He explained that by design they do not load it up past the point where one transformer can hold the demand for a short amount of time. In this way in the event of a failure, he stated, you don't lose your customers.

Mr. Walsh stated that they are trying to address the increased needs of the community due to the increased development. Mr. Vogt asked what percentage increase would be provided. Mr. Harder stated that it will be about a 50% increase.

Ms. Rubenstein asked about the sound study and if there were recommendations made as a result of that study. Mr. Harder stated that yes, there were. Ms. Rubenstein asked if the study was done after the application to the Planning Board was submitted. Mr. Harder responded yes. Ms. Rubenstein asked if they made changes to their plan as a result of the sound study. Mr. Harder explained that, yes, initially they planned on extending the

substation and adding the second transformer. He stated that they received a complaint from Ms. Suzanne Horn regarding the noise levels of the transformers. He pointed out the area on the map where they have agreed to install sound walls. Following that, he explained that the Planning Board asked them to do a sound study to find out how effective they would be. Ms. Rubenstein asked if there are sound walls in place now. Mr. Harder explained that there are no existing sound walls, that they are proposed.

Ms. Rubenstein asked what the sound study detected or demonstrated. Mr. Harder stated that with the addition of the sound walls it will reduce the sound level to the nearest residence (Ms. Suzanne Horn). He pointed out on the map that at location #4 the sound is anticipated to rise by 1.4 decibels and at location #5 it is anticipated to rise by 2.5 decibels. Ms. Rubenstein asked for a copy of the sound study.

Mr. Vogt asked whether adding the second transformer would, in fact, reduce the noise output because the load on the transformers would be lower. Mr. Harder stated that the sound analysis was based on both transformers being loaded to the planned capacity. Mr. Vogt asked again if adding the second transformer would lower the load and possibly reduce the noise levels. Mr. Harder stated that it is possible, but until you go with the maximum loading on the transformer that you may see at a certain hour it is hard to make that comparison.

Mr. Vogt asked if they went with a larger transformer would it lower the noise output. Mr. Harder stated that, in lieu of the sound walls, he cannot answer the question. He stated that the newer transformers by design are quieter than the old ones. Ms. Perkins asked if this is a new transformer. Mr. Harder stated that, no, it is not. Mr. Vogt asked if they will be using new transformers for this site. Mr. Harder stated that, no, they will be using the same ones that they loaded up for the sound study.

Mr. Courtney stated that they have agreed to install the acoustical walls that the Planning Board requested.

Ms. Rubenstein again asked the status of their application to the Planning Board. Mr. Courtney stated that the issue of the non-conforming use was raised at the last Planning Board meeting, which brought them to the ZBA. Ms. Rubenstein asked the status of the negative declaration and explained that before the Planning Board can approve their application they have to adopt a resolution that they are not going to have a negative impact on the environment. She stated that ZBA, if it were an involved agency on this application, would not be permitted to act until the lead agency had addressed all of their environmental concerns and then the applicant would come to the ZBA. She noted that the ZBA has no environmental information on the application and cannot issue an approval at this meeting.

Mr. Walsh stated that the Planning Board tabled their application until they received their variance from the ZBA. Board members agreed that the Planning Board should have provided the ZBA with information and included the ZBA as an involved agency. Mr. Walsh stated that they understood in filing the application and based on the fact that there is a reduced standard for utilities and the positive recommendation made by the Planning Board that this would not be a contentious issue. Ms. Rubenstein stated that the ZBA must abide by NYS law that says an EAF must be done before a variance can be granted. She noted that there are clear environmental issues associated with this project that are more properly dealt with at the Planning Board.

Mr. Courtney asked about the EAF. Ms. Rubenstein explained that with a coordinated review, the applicant does one EAF which is circulated to everyone and the ZBA provides its comments to the Planning Board. Normally, she explained that with a coordinated review the ZBA will not act on a variance appeal until after the negative declaration has been completed or a DEIS has been submitted. She suggested that the ZBA communicate with the Planning Board to let them know that they will not issue a variance until they have issued a negative declaration.

Mr. Dunn referenced a letter addressed to the Planning Board regarding the EAF that was submitted on 12/26/06. This letter states that the project acreage descriptions on the EAF should be calculated as the gravel area of the existing station and drive. Mr. Dunn noted that the ZBA does not have a copy of the EAF. Mr. Harder stated that they may be requested to change the forms again because the use areas on the forms that were submitted include the distribution lines out the back. If it is decided that they don't count and that they are not part of the use, Mr. Harder stated that they will have to change the forms. Ms. Rubenstein asked if the current EAF is dated 3/26/07. Mr. Harder confirmed that it is.

Ms. Rubenstein asked if there were any other studies besides the acoustical study that they were required to conduct. Mr. Harder responded that no others were requested by the Planning Board but that they did go back and look at spill containment plans. He noted that there is no site-specific plan required for this site.

Mr. Courtney asked if a decision would be made tonight. Mr. Dunn explained that, as required by NYS law, until the ZBA has a negative declaration from the lead agency it cannot make a decision. Ms. Rubenstein noted that the ZBA could do its own independent review, which is not necessary if the Planning Board is in the process and is conducting a coordinated review. The applicants agreed that it does not make sense for the ZBA to do its own independent review. Mr. Dunn will inform the Planning Board Chairman that the ZBA will not act on the variance appeal until the Planning Board has issued its negative declaration.

Ms. Rubenstein asked that, if they are required to update the EAF, they send the ZBA a copy.

Mr. Vogt asked what the cost of the new transformer would be versus using one of the older styles. Mr. Harder stated that the older style, a single new transformer of that size costs \$1.5 million.

Mr. Dunn opened the Public portion of the Hearing and stated that it will remain open. Further, he invited members of the public to speak.

Ms. Suzanne Horn, Cedar Credit Farm, 1971 Route 44, Pleasant Valley, NY was sworn in. Lisa and William Savino, 8 Pleasant View Road, Pleasant Valley, NY were sworn in. Ms. Horn provided written comments to the ZBA and read them out loud. The ZBA provided the applicants with a copy of the written comments.

Ms. Rubenstein asked if Ms. Horn has been to the Planning Board meetings. Ms. Horn stated that she has attended all the meetings regarding this application. Ms. Rubenstein asked if the Planning Board has had a conversation about the spill containment issue. Ms. Horn responded that, yes, the Planning Board has raised questions about spill containment

and have asked about the quantity of oil in the current transformer (2,000 gallons) and what the total quantity would be in 2 transformers (4,000 gallons). Ms. Horn stated that she contacted the environmental contact person at Central Hudson to inquire about the PCB content of a transformer that was reclassified as non-PCB. She stated that Central Hudson stated that the maximum is 50 parts per million. She noted that the Planning Board was really asking about the containment system and that the answer from Central Hudson is that there is no containment system, that there will be 3" of stone which would slow down a spill but not contain it. She stated that the log for previous unintentional spills has not been submitted to the Board, but it would indicate the cumulative effect of spills that were officially non-recordable because they were not over 5 gallons. She stated that the Board has also requested at 2 meetings for the applicants to submit a sound mitigation plan, which plan the Board would have reviewed by an acoustical engineer. She stated that this has not yet occurred.

Ms. Horn stated that the sound mitigation would be a measurement from Central Hudson's transformer site to the dwellings. However, she stated that it boggles her mind that the distance to a dwelling would be the measurement for sound mitigation when real people live not only inside their houses but outside on their property. She stated that their feeling is that Central Hudson, with regard to noise, should contain its transformer noise so that it does not go outside its own property boundaries. She stated that they feel that Central Hudson has no right to intrude on their property with its non-conforming use and that they have every right to reside on their property in tranquility. She stated that this is a major unresolved issue before the Planning Board.

Mr. Dunn asked the applicants what the difference in cost would be to install a high efficiency, low or no PCB transformer as compared to putting in a second transformer that is of lower efficiency. Mr. Harder stated that based on current prices for the same size transformer it would be about \$3 million more. Further, he stated that the transformers that are planned for the site are not PCB contaminated. Mr. Dunn asked him to explain what that means. Mr. Harder explained that the EPA has deemed them to be not PCB contaminated, that they are less than 50 parts per million.

Mr. Vogt asked if the oil containing the PCBs was drained from the unit and has been replaced with other non-PCB oil and the residue is less than 50 parts per million. Mr. Harder stated that it's his understanding that in the late 80's or early 90's the unit was flushed out and chemically broken down.

Mr. Vogt asked what the cost would be to put in a berm system to contain the 4,000 gallons of oil. Mr. Harder stated that, where there is a reasonable expectation that it could reach navigable waters per the EPA regulations, yes they do that. He stated that this site was looked at and it was deemed to not be necessary. Mr. Dunn asked whether ground water contamination was not an issue. Mr. Vogt stated that the development on the site has created a massive amount of water run off down to the telephone poles, pouring water out of the poles even before the huge storm. He stated that from an environmental standpoint it makes common sense to protect whatever water is in that area by using some sort of a berm.

Mr. Harder stated that the standard design for that is to put in a bentonite liner under the gravel creating a pond underneath the stone. He stated that the problem with a curb is that it will have to be drained out every time. Mr. Harder stated that the liner has fabric on both sides of a special clay compound in between. Ms. Rubenstein asked if the water goes

through it. Mr. Harder stated that it does. Mr. Maucher asked if the oil will penetrate the liner. Mr. Harder stated that it will not penetrate it quickly. He stated that the intent is to let water through and hold oil. Mr. Maucher asked what happens if there is some kind of an oil spill. Mr. Harder stated that it stays there until you get there and clean it up.

Ms. Rubenstein asked how a spill is detected. Mr. Harder stated that there are remote sensors – oil level gauges – that are constantly monitored and an alarm is triggered if the level goes low. He stated that any time day or night if there is an alarm someone goes out there to look at it.

Mr. Harder stated that no containment system is currently being proposed. Ms. Rubenstein asked if something like the clay liner could be used on this site. Mr. Harder stated that it could be if it were required by a Board.

Mr. Dunn voiced the concern, on behalf of the local residents, for any kind of oil getting into the ground water. Board members concurred with this concern.

Ms. Rubenstein asked the applicant what the impact will be if they don't get the approval for the 2nd transformer. Mr. Harder stated that eventually it will probably lead to an outage if the transformer fails, in which case they would have to move a mobile transformer onto the site until they get approval for a fix. Ms. Rubenstein asked if the outage would be local. Mr. Harder responded yes.

Ms. Rubenstein asked the applicants to respond to Ms. Horn's written comments. Mr. Dunn clarified that the applicants' response should be to the ZBA and then the ZBA will respond to Ms. Horn. Further, Mr. Dunn stated that there are some legitimate concerns, especially regarding ground water contamination. He stated that whatever can be done to alleviate the concern should be done. He asked the applicants to formulate a response. Mr. Harder stated that they will.

Public Hearing remains open.

Mr. Dunn will speak with the Mr. Labriola, chairman of the Planning Board.

3. APPEAL #893 FISCHER – VARIANCE

Mr. Dunn noted that this is an appeal for a 3' variance from the side setback requirements on both sides for location and construction of a residential garage on the parcel. He noted that the requested variance is for a total of 6', with 3' per side. The file contains:

- Referral from the Planning Board: positive recommendation
- Affidavit of publication in The Poughkeepsie Journal dated 4/21/07
- List of adjacent property owners who have been notified of the appeal

Mr. Daniel Fischer, 183 Bower Road, Poughkeepsie, NY 12603 was present and sworn in. Mr. Fischer explained that he answered questions for the Planning Board regarding the plot plan.

Mr. Dunn stated that the ZBA is charged with keeping as close to the Zoning Code as possible. He noted that Mr. Fischer has a 48' wide lot, 24' wide garage; therefore, he is 6' short – 3' on either side. Mr. Dunn stated that the proposed garage is 30' deep and asked if

the applicant could narrow the garage to 20' thereby only needing a 1' variance on each side. He noted that this would be closer to the Zoning requirements.

Mr. Fischer stated that he went with 24' because he thought he left enough room on either side. He stated that the house is 10'8" on one side. So, if you look down the driveway, and look along the side of the house, the garage is set back further from the lot line than the house is. He pointed out how narrow his lot is and how small his house is. He stated that he needs every inch he can get and this is where he is trying to get it.

Mr. Dunn suggested revising the dimensions of the garage to a greater depth but a narrower width. Mr. Vogt suggested 20' x 36'.

Ms. Rubenstein stated that, compared to some variances the ZBA has considered, this one does not seem substantial. Mr. Dunn acknowledged her point and noted that the charge to the ZBA is to adhere to the Zoning Code. Ms. Rubenstein stated that she is OK with this request. Mr. Gerstner stated that he also does not have a problem with this request and noted that the applicant did a wonderful job with his house. Mr. Fischer stated that he only took a variance for where the existing house was 10'8" from the side marker, that on the other side he took no variance – there's no porch, no back porch, no side deck. He stated that this is why he's trying to get the maximum space possible, that he is willing to negotiate, and that he has no problems with his neighbors.

Ms. Czech stated that the proposed location of the garage makes sense. Ms. Rubenstein agreed.

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

DISCUSSION

3. APPEAL #893 FISCHER – VARIANCE

Ms. Rubenstein: **MOTION TO GRANT THE 3' VARIANCE ON EACH SIDE;
SECONDED BY C. PERKINS**

Ms. Perkins read the worksheet into the record.

VOTE TAKEN AND APPROVED 6-1-0

1. APPEAL #891 TODD – VARIANCE

Mr. Vogt stated that when you go up the driveway to the cul-de-sac area, the driveway is an extreme right and curves around in a reverse C and the house in the back portion of the lot. He stated that the land drops off on either side of the driveway. When you look at the site, he stated that there is no other place for the garage. He noted that the area where the septic is located is the only other area that makes sense. He stated that because of the distance from other homes in the area, the garage will not be seen. If he does move it off the lot line by 2', the entrance to the driveway would be at the garage level and he would have no turning area.

Ms. Rubenstein stated that the problem with a 0' lot line variance is if the neighbor decides to put up a fence, he cannot maintain his property. Further, she questioned how to proceed without an agreement from the neighbor. Mr. Vogt noted that he cannot service the back of

the garage without being on the neighbor's property. Ms. Rubenstein stated that even 1' off the property line, you can at least access the back of the structure without encroaching on the neighbor's property. She stated that she understands that the applicant has constraints but any time that she sees a 0' variance it is always the same issue. She stated that the ZBA would, in effect, be approving an impingement onto the adjacent property. She stated that she has a problem with doing that.

Mr. Vogt noted that there was no response from any neighbor. Ms. Rubenstein acknowledged that, but asked if the ZBA has the right to say that in perpetuity the person who owns that structure can go onto the adjacent property to do maintenance on their structure. She noted that it burdens the neighbor forever. Ms. Czech asked if he could angle it. Ms. Perkins stated that he could make it even 1' smaller, which would give a 1' clearance in the back.

Mr. Gerstner asked if the staking was accurate. Ms. Rubenstein recalled that she asked the applicant specific questions to which he answered in approximate terms. Mr. Dunn stated that the whole application is sloppy – there's no sign, couldn't see the stakes, there were no ribbons, measurements are all approximate. Ms. Rubenstein suggested that this application be adjourned and the applicant be instructed to stake the site. She also suggested that the ZBA ask him to make the structure smaller. Ms. Perkins concurred with those suggestions. Mr. Dunn pointed out that the applicant has a 2-car garage on the house already.

Mr. Maucher asked that the applicant be requested to stake the site exactly and show the property line precisely. Mr. Vogt concurred that the applicant needs to stake it to see where the lot line is and the relationship of the garage to the lot line, so that the ZBA can get the measurement. Mr. Vogt will call the applicant.

2. APPEAL #892 CENTRAL HUDSON – VARIANCE

Ms. Rubenstein expressed her desire to have Mr. Volkman respond to the question of whether they need a variance.

Mr. Vogt mentioned that the existing transmission lines will be removed and put underground; therefore the area will be reduced which will impact how the area calculation is done. Ms. Rubenstein admitted that this is confusing and that that portion of the Code is one of the most troublesome provisions that the ZBA must deal with. Mr. Vogt asked what they are increasing if you consider the area that's used for the transmission lines and the footage of the property. He noted that they are reducing transmission lines as part of the non-conforming use, and they are increasing the gravel area. He stated that if you look at the numbers, it fits.

Mr. Gerstner reiterated the problem with the Planning Board non-communication issue and that Mr. Volkman provided the ZBA with his letter on the day of the meeting and did not respond to the question that was posed. Ms. Perkins asked that the ZBA request the attorney to respond to the specific question. Mr. Vogt stated that the ZBA needs a specific answer in order to go forward.

Mr. Dunn asked if the Planning Board has already declared itself lead agency but noted that they didn't circulate. Ms. Rubenstein stated that the ZBA is OK with the Planning Board being lead agency and wants the ZBA to be treated as an involved agency. Thus, she noted that the ZBA can provide comments before they issue the negative declaration. Further, she

stated that one of the ZBA's comments will be to require the liner that Mr. Harder described. Ms. Czech concurred with the inclusion of the liner.

Ms. Rubenstein stated that her major concern is the noise and noted that Ms. Horn has a good point regarding noise pollution beyond the reaches of Central Hudson's property.

Ms. Perkins noted that a transformer exploded recently in Fishkill and expressed her concern for the proximity to the pipeline. She noted that it is really aged equipment that they are putting in there, and they are doubling the risk. Mr. Vogt noted that instead of spending \$1.5 million on a new transformer, they are going to use a transformer they already own.

4. MINUTES

Ms. Rubenstein: **MOTION TO APPROVE JULY 2006 MINUTES AS WRITTEN; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 6-0-0**

Ms. Rubenstein stated that a copy of the resolution must be attached to the March 2007 minutes for the record book.

Ms. Perkins: **MOTION TO APPROVE MARCH 2007 MINUTES AS WRITTEN AND WITH THE RESOLUTION ATTACHED; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 6-0-0**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:30 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the April 26, 2007, 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 24, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on May 24, 2007, 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
 Rob Maucher
 Helene Czech
 Lisa Rubenstein

Members absent: Ronald Vogt
 Christina Perkins

1. **APPEAL #894 – METHODIST CHURCH OF PLEASANT VALLEY**

Mr. Dunn stated that the Methodist Church has made an appeal for an area variance to update and enlarge their existing off-site sign in order to include mention of the nursery school. He noted that the application states that:

- the increased size has no impact on nearby properties as it is in keeping with a commercial zone
- the requested variance is not substantial as the sign is located in a commercial zone and there is a large ground sign on the premises.

Mr. Dunn noted that the file contains:

- Referral from the Dutchess County Department of Planning and Development that states that the application is incomplete
- Affidavit of publication in The Poughkeepsie Journal on 5/18/07
- Referral from the Pleasant Valley Planning Board: negative recommendation as the sign is off-site and the ordinance does not allow for increase in size of non-conforming signs and the existing sign was not included or approved with the existing site plan for Milestone Square
- List of adjacent property owners who were notified of this hearing

Ms. Sheila Fuller Walker, 94 Pleasant View Road, Pleasant Valley, nursery school board member, was sworn in. She mentioned that the Board should have received a letter from Milestone Square/Time Equities giving them permission to put the sign there. She stated that there should also be a copy of their insurance showing that they have placed Time Equities on their coverage. Mr. Dunn stated that the file contains the insurance note. Ms. Fuller asked if any of the adjacent property owners have responded. Mr. Dunn stated that the ZBA has heard nothing. Mr. Dunn stated that the file contains the letter from Time Equities but that it cannot be entered into the record because it is not notarized.

Ms. Walker stated that they want to increase the size of the sign, which is already located on the corner of the Milestone Square property. She stated that her understanding is that the sign has been on that site for 25+ years. She does not know if they have a permit or who put it up. She stated that the sign is decrepit and needs to be updated. She stated that they need a visual sign to show people that there is another option for nursery school, the Pleasant

Valley Christian Nursery School. She stated that because they are not on the main drag, they need a sign directing people to their nursery school. This also applies to the location of the church so that people know how to find the Methodist Church.

Mr. Dunn stated that there is no provision for off-site signage. Mr. Friedrichson confirmed this and stated that this sign is non-conforming because it is off-site.

Ms. Rubenstein asked if anyone knows when the sign was put up. Mr. Dunn responded no. She asked if it pre-dates 1974 when the Zoning Code was adopted. Mr. Friedrichson stated that it was already there in 1994 when he became the Zoning Administrator. He stated that the records do not show that anybody ever sent them a notice of violation, which he stated would indicate that the sign was there before Zoning. He stated, however, that he cannot verify this. Ms. Walker stated that the pastor of the church has changed several times and that there are no records at the church either.

Ms. Rubenstein stated that, therefore, it is not known whether it is a non-conforming sign or an illegal sign. She noted that, customarily, the burden of proving the non-conforming use is on the property owner.

Ms. Rubenstein also noted that the DC Department of Planning and Development letter suggests that the sign is within the NYS right-of-way and not on private property and would, therefore, require a use variance and not an area variance. She stated that this is a critical determination which may dispose of this appeal. She gave Ms. Walker a copy of the letter. Ms. Walker asked for clarification on how to take the measurements to determine the right of way setback. Ms. Rubenstein suggested that Milestone Square would know and that pertinent information may be on the Milestone Square/Time Equities site plan.

Board discussed location of the Milestone Square sign as compared to the Church's sign. Mr. Maucher asked if the DC Department of Planning and Development did the measurements or if they were saying that the information is not available or is not clear whether the sign violates the right-of-way. Mr. Friedrichson quoted the definition of "lot" which states that the lot line on an arterial road is 60' from the center of the road. Mr. Maucher again asked about the measurement for the right of way – how many feet from the center of the road is the right of way for NYS. Mr. Friedrichson stated that we do not have that for NYS or county roads and only have that for the local roads, which is listed in the subdivision regulations. Further, he stated that there's a difference between lot line and what NYS actually says is their property. He stated that the only person who can answer the question about the NYS right of way is NYS.

Ms. Rubenstein again suggested that someone review the Time Equities' site plan that was submitted with their sign permit application. Further, she pointed out that the Methodist Church's application is not complete and the application cannot go forward until that question is answered.

Ms. Czech pointed out that the size of the sign is also a concern.

Ms. Rubenstein explained that either it is an illegal sign or a non-conforming sign. She stated that, until the applicant can show that the sign has been on that site since before 1974, it is currently an illegal sign. Ms. Walker asked how to find proof of that. Ms. Rubenstein suggested looking for old photos of the site and explained that it is the applicant's

responsibility to do this research. Nonetheless, Ms. Rubenstein explained that it is probably not an area variance if it is a non-conforming sign and that the DC Planning Department thinks it's a use variance. If it's an illegal sign, then they have to apply for a use variance, but they must have proof that it is illegal. She stated that the ZBA has never granted an off-site sign that she's aware of. Also, she pointed out that the Board denied Milestone Square's application to increase the size of their sign.

Ms. Czech stated that the Board needs more information – if the sign sits in the right of way, then the appeal is moot. If it sits on the lot, then it brings up more questions. Ms. Rubenstein stated her feeling that if it sits on the lot, it creates huge potential issues in the future if the Board grants approval for that sign. She stated that the ZBA has tried to hold the line on the sign ordinance in an effort to prevent setting a precedent that opens the way for signs to get bigger and bigger in the Town.

Mr. Maucher asked Ms. Walker why she applied for an area variance. She responded that the Zoning office advised her on how to apply. Mr. Friedrichson explained his thinking about this non-conforming sign. Ms. Rubenstein pointed out that it may be an illegal sign. Ms. Czech expressed her concern about the advertisement on the sign for the nursery school and noted that generally advertisements are done in the phone book. Ms. Walker stated that she'd be happy to delete mention of the nursery school from the sign. She expressed her hope that the ZBA would grant an appeal such as this for a non-for-profit church sign. Ms. Czech stated that that is not the issue, that it is a problem with it being off-site. Again, Ms. Walker stressed that it is a sign for a church. Mr. Dunn explained that the Board cannot make exceptions because it is a church. Ms. Czech again explained that the not-for-profit status of the church has no bearing on the issues present with the sign. Ms. Rubenstein stated that the ZBA has treated other not-for-profits exactly the same. Ms. Czech stated that preference cannot be given and that the Board is charged with following the Zoning Code.

Ms. Walker stated that the Board should take into consideration that the Church has never been told that their sign is either illegal or non-conforming. She stated that it is disheartening to have come before the Board with a plan to improve the sign and is now being told that the Church may have to remove it entirely.

Ms. Czech asked Mr. Friedrichson if the Church wanted to improve their sign without changing the size would they still need to apply for a variance. Mr. Friedrichson explained that he has the authority to authorize signs if it is only a matter of repainting the same size, same location. Ms. Czech stated, therefore, that they can improve their sign with no need for a variance. Mr. Friedrichson stated that that is correct under the assumption that it is a non-conforming sign. He stated that he has no proof one way or the other whether it is non-conforming or illegal.

Mr. Rubenstein explained that, when applicants have a non-conforming sign, the ZBA requires them to show the Board their deeds or some other documentation. She stated that it is the applicant's burden to provide proof, not the Zoning Administrator's, and that the ZBA is bound by its rules and must be consistent with all applications that come before it. Mr. Friedrichson stated the additional complication with signs – that unlike lots which have deeds, signs have no such documentation. Ms. Rubenstein suggested that there may be photos in the library, that there may be aerial photos. Board discussed the time frame when the 1830 Inn was razed and the plaza was built. Mr. Rubenstein again suggested reviewing the Milestone site plan which would have included everything that existed on the site at that

time. Mr. Friedrichson stated that the plaza was built in the 1980's and, therefore, still does not prove that the sign would have been there prior to Code.

Mr. Friedrichson stated that he is under the impression that the sign is non-conforming, because he cannot prove that it isn't. Therefore, he stated that if the applicant wishes to upgrade the sign without increasing its size, then the appeal for the variance is not required.

Public hearing opened.

Mr. Herschel Dinkins, 305 Mill Street, Poughkeepsie, NY 12601, was sworn in. He asked about the issue of the right of way and what it means. Mr. Dunn stated that, on a major road, the municipality is assumed to have the right of way 60' from the center of the road. Therefore, he stated that you go to the center of Route 44, measure back 60', and there should not be anything constructed within that setback. He estimated that the Milestone Plaza sign is probably within the 60' setback.

Mr. Dinkins asked about the impact of the applicant changing the content of the size. Mr. Friedrichson stated that, if the sign remains the same size and that there are no other significant changes, he has the authority to grant the permit.

Mr. Dinkins asked for clarification of the non-conforming status. Mr. Dunn explained that the sign is non-conforming because it is off-site and not on church property. Mr. Dinkins asked about billboards. Mr. Dunn stated that they are regulated by NYS because they are on NYS property.

Mr. Dunn mentioned that the ZBA board members understand that the church is a non-for-profit and asked Ms. Walker to understand that the ZBA cannot set a precedent for them because doing so will bring in many others applicants and the Town will come to resemble Las Vegas.

Mr. Ed Feldweg, 86 Gretna Road, Pleasant Valley, NY 12569, was sworn in. He stated that the burden of proof is the applicant's and mentioned that there are some sources in the Town to establish how long that sign has been there. He suggested talking with Olive Doty, the Town historian. He stated that he does not know if Marion Van Wagner is still alive. He stated that the library should have a whole bunch of photos that were taken of Main Street during the flood of 1955. He suggested reviewing the Milestone Square site plan. He also suggested talking with Edna Hommel.

Mr. Fracchia suggested that there must be some photos in the library of the 1830 Inn. Mr. Gerstner stated that Traver Road School has a bunch of old photos.

Public Hearing closed.

DISCUSSION

1. APPEAL #894 METHODIST CHURCH OF PLEASANT VALLEY – VARIANCE

Ms. Rubenstein suggested that the Board will not be voting on this appeal tonight. Mr. Dunn agreed.

Ms. Rubenstein stated that, regardless of the technical issues – non-conforming, illegal, right of way - her main concern is the inevitable impact of setting a precedent. She pointed out that the ZBA has consistently held the line on sign applications. Further, she stated that, if the Board were to allow an expansion, the Board would be looking at some very serious applications which then become more and more difficult to turn down without getting sued. Mr. Dunn stated that the ZBA has been very protective of the Town Ordinance and expressed his concurrence with Ms. Rubenstein's stated position. Ms. Rubenstein stated that if the Town Board wants to make signs bigger, then they should do it as a policy decision Town-wide. She stated that she does not want to spend time focused on the technicalities. Mr. Dunn stated that they cannot make the sign bigger. Ms. Czech stated that a larger sign would impact sight distances and would block the driveway.

Mr. Dunn stated that the ZBA has been through a number of law suits and has won every one of them simply because the Board has never allowed larger signs. Whether or not this sign is legal, whether or not it predated Zoning, he stated that he does not want to get involved in that.

Ms. Rubenstein stated that the question of replacing a sign is not in front of the ZBA for consideration. It is Mr. Friedrichson's responsibility to do whatever he thinks is appropriate.

Mr. Gerstner stated that the first order of business is to determine whether the sign is in the right of way. Ms. Czech stated that the ZBA does not have to provide that information, that the applicant must answer that question. Ms. Rubenstein stated that even if the ZBA had all the information it needed, this Board cannot vote on this application until the DC Department of Planning and Development deems the application to be complete and provides a recommendation.

Mr. Dunn noted that options for next steps:

- Table the appeal pending answers to DC Dept of Planning's questions
- The appeal dies if the applicant does not return to the Board
- The applicant pursues the research on the history of the sign

Ms. Walker stated that she is fading into the sunset, that they will get their permit from the Zoning Administrator, and will make the sign pretty. She stated that she is withdrawing her appeal for a variance.

2. LEAD AGENCY – CENTRAL HUDSON TINKERTOWN SUBSTATION

Mr. Dunn stated that the Planning Board is designating itself as lead agency on Central Hudson's Tinkertown Substation expansion site plan. Ms. Rubenstein asked if the Planning Board provided the ZBA with an EAF. Mr. Dunn stated that the file contains a full EAF. Ms. Rubenstein reviewed the EAF.

Mr. Dunn stated that the file contains a request of the Planning Board to become lead agency in the Central Hudson Substation matter.

Mr. Dunn: **MOTION TO APPROVE PLANNING BOARD AS LEAD AGENCY;
SECONDED T. GERSTNER**

Discussion: Ms. Rubenstein suggested that, since the ZBA is an involved agency and its input is important, she suggested that the ZBA forward to the Planning Board the minutes of ZBA meetings at which there were lengthy discussions of the environmental issues involved in this project.

VOTE TAKEN AND APPROVED 5-0-0

3. MINUTES

Ms. Rubenstein: **MOTION TO APPROVE AS AMENDED MINUTES OF THE ZBA
4/26/07 MEETING; SECONDED BY H. CZECH; VOTE TAKEN AND APPROVED 5-
0-0.**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:00 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the May 24, 2007, 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

June 28, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on June 28, 2007, at the Pleasant Valley Fire House, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:32 p.m.

Members present: John Dunn
 Tim Gerstner
 Rob Maucher
 Ronald Vogt
 Ed Feldweg, Alternate

Members absent: Helene Czech
 Christina Perkins
 Lisa Rubenstein

Also present: Dieter Friedrichson, Zoning Administrator

1. **APPEAL #891 TODD – VARIANCE**

Mr. Dunn noted that this is a revision of a previous application submitted to the ZBA now requesting a 12' variance from minimum side setback for the location and construction of a residential garage on the property at 44 Eleanor Drive. He stated that the file contains:

- Planning Board recommendation: negative as the variance is too great and there may be alternate locations for the proposed structure
- Affidavit of publication in The Poughkeepsie Journal dated 4/21/07
- List of adjacent property owners who have been notified of this meeting

Mr. James Todd, 44 Eleanor Drive, Salt Point, NY, was present and sworn in. He stated that there are no other suitable sites on the property for this garage – none – that is the only spot. He stated that it is miles away from his neighbor. Mr. Vogt noted that originally he had proposed to place the structure on the property line and now has moved it in 3'. Mr. Todd concurred that moving it in 3' from the property line is the best he can do, otherwise it would block the driveway.

Mr. Dunn asked about the area behind the house, before the precipitous drop, if that is large enough. Mr. Todd responded that it is right on the line and has the same problem.

Mr. Feldweg stated that he made a site visit yesterday and noted that 3' is pretty close to the line but also noted that the neighbor's house is quite a ways down. He stated that he pulled into the proposed site for the garage and tried to back out onto the driveway and found that it is very tight radius for a full sized vehicle. Mr. Todd agreed that it is tight and stated that their original plan was to keep it out of the driveway, but are trying to meet the Board's request to come off the property line.

Mr. Feldweg and Mr. Todd talked about maintenance of the structure. Mr. Dunn stated that originally Mr. Todd had applied to put the garage on the property line and the Board noted that he could not do any maintenance to it without being on the neighbor's property.

Therefore, Mr. Todd saw that he could move it 3' even though it would be tight to maneuver. Mr. Vogt noted that this is a reasonable accommodation.

Public Hearing was opened and Mr. Dunn invited the public to speak. No one spoke. Public Hearing was closed.

2. APPEAL #895 FLAHERTY – SPECIAL USE PERMIT

Mr. Dunn noted that this is an appeal for a Special Use Permit at 36 Rachel Road in an R-1 zone, that the applicant wants to conduct a home occupation – interior decorating – in the residence on the premises. He noted that the file contains:

- Planning Board recommendation: positive recommendation
- Fire Advisory Board recommendation: no recommendation as it represents no fire or safety issues
- Affidavit of publication in The Poughkeepsie Journal dated 6/22/07
- List of adjacent property owners who have been notified of this meeting

Ms. Alecia Flaherty, 36 Rachel Road, Pleasant Valley, NY, was present and sworn in. She explained that as an interior decorator most of her meetings take place in her clients' homes. She stated that she does expect additional UPS and FED EX traffic. Also, she stated that perhaps once a month she will have a tractor trailer delivery with furniture that will come in and then leave the premises within a couple of hours. She stated that some of her large furniture suppliers will not drop ship to clients. So she needs to check it in, make sure it has not been damaged, and then have a local mover deliver it to the client. She stated that very few of her furniture dealers require this. She stated that everything else is delivered by UPS or FED EX.

Mr. Dunn asked if she has any employees. Ms. Flaherty stated that she has no employees.

Mr. Vogt asked how long the furniture that is delivered by tractor trailer will be stored at her house. Ms. Todd stated that it will be in her garage for a couple of hours until she can move it out. She stated that they live on a cul-de-sac. Mr. Vogt asked for clarification of how a tractor trailer can get to her property. Ms. Todd stated that they have come in and delivered to her personally before, that they can park literally right in front of her house, that they have a very large cul-de-sac. Again, she stated that this happens maybe once a month.

Mr. Dunn asked, other than furniture, what kind of goods she would have on the premises. Ms. Todd stated that she would have bedding or curtains held for a couple of weeks. Other than that, she stated she would have small items, like accessories, art work – all for children – nothing large.

Public Hearing was opened and Mr. Dunn invited the public to speak. No one spoke. Public Hearing was closed.

3. APPEAL #896 ROWE – SPECIAL USE PERMIT

Mr. Dunn noted that this appeal is for a Special Use Permit at 1732 Main Street in an R-1 zone to conduct retail sales – hardware store – which will be changed from pre-existing non-conforming use of a construction business on the premises. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 6/22/07
- List of adjacent property owners who have been notified of this hearing

- Planning Board recommendation: negative recommendation with mention of their concerns that the proposed retail use would produce heavier traffic, difficulties with parking, obtrusive lighting, etc. and noting that if the ZBA grants the appeal the applicant must submit an application for site plan revision for review and approval by the Planning Board.
- Fire Advisory Board recommendation: FAB has concerns with the location of the proposed use on Route 44 regarding access and egress, sight distance for vehicular traffic, particularly truck deliveries.
- Environmental Assessment Form: unlisted action
- Notarized letter from Brian Bovee, Bovee Construction Company, granting Mr. Rowe permission to sign, pursue, and/or file for any and all paperwork related to the pursuit of a use variance for a commercial building located at 1732 Main Street, Pleasant Valley, NY.

Mr. Dunn read into the record a letter from the DC Department of Planning (original on file) stating that the application is a matter of some concern for the following reasons:

- Location on Route 44
- Zoning Code: “a non-conforming use may be changed to a different non-conforming use only upon determination by the ZBA that the proposed new use will be no more detrimental to its neighborhood and surroundings than the use it is to replace. In determining relative detriment the ZBA shall take into consideration traffic generated and hours and manner of operation.”
- The proposed retail use will likely generate much more traffic than the existing use – additional vehicles turning into and out of the site will exacerbate traffic congestion and reduce safety along that stretch of Route 44.
- Retail businesses tend to thrive when they are in close proximity to each other. Relocating this business outside the hamlet center would drain a portion of the customer base from the hamlet while promoting the proliferation of auto-oriented highway strip commercial.

Mr. Dunn read into the record the recommendation from the DC Department of Planning that the ZBA deny the requested Special Use Permit. Further, he read into the record the Department’s explanation that if the ZBA determines to grant the permit the law requires that to do so is by a majority plus one of the full membership and that it notify the Department of the reasons for its decision. Mr. Dunn explained that there are 7 members of the ZBA, plus one alternate member, and, therefore, the majority plus one of the ZBA full membership is 5. He noted that this evening there are 5 members present.

Mr. Kevin Rowe was present. Mr. Dunn explained that, as the DC Department of Planning’s letter lays out, 5 out of 5 Board members who are present this evening would have to vote in favor of this appeal. Therefore, he explained to Mr. Rowe that he can choose to come back to a future ZBA meeting in hopes that a full Board would be present. Mr. Rowe asked the likelihood of there being 7 Board members sitting at the July and August meetings, given that this is the summer season. Mr. Dunn stated that he does not know the answer to that question. Mr. Vogt stated that most often 6 out of 7 members are present on a regular basis.

Mr. Rowe asked if he could reapply if this appeal is voted down. Mr. Feldweg explained that he can reapply but that the reapplication must be substantially different from the original. He stated that you cannot keep rolling the same application over again.

Mr. Feldweg asked if Mr. Rowe is under time pressure. Mr. Rowe mentioned that the monthly meetings create delays and a lengthy process. Mr. Vogt explained that usually the Board is able to act on and reach a decision about the appeals on the evening's agenda, unless the Board asks for extension for additional information. Mr. Dunn pointed out that he is not predicting the outcome of a vote this evening, but rather is informing Mr. Rowe of his options for how to proceed.

Mr. Rowe stated that he will return to a future ZBA meeting.

Mr. Feldweg: **MOTION TO PUT THIS APPEAL ON THE AGENDA OF THE JULY MEETING OF THE ZBA AT THE REQUEST OF THE APPLICANT; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 5-0-0**

Neighbors who were present at this meeting asked if they should speak this evening or return for the July meeting. Mr. Dunn advised them to return to the July meeting and explained that they will not receive an additional notice on this appeal.

4. APPEAL #897 CARRINGTON – VARIANCE

Mr. Dunn stated that this is an appeal is for a property located at 5 Carrington Court and is for a 2' variance from minimum center of road setback requirement for a new home mistakenly located 58' from center of road. He noted that the file contains:

- Recommendation from the Planning Board: positive recommendation
- Fire Advisory Board comment form: no recommendation as there are no fire or safety issues
- Affidavit of publication in The Poughkeepsie Journal dated 6/22/07
- List of adjacent property owners who have been notified of this hearing

Mr. Dunn explained that the letter from Mr. Higgins that authorizes Mr. Page of Carrington Construction to represent him cannot be entered into evidence because it is not notarized. However, the applicant is listed as Carrington Construction.

Mr. Steven Page, Carrington Construction, 28 Warren Farm Road, Hopewell Junction, NY 12533 was present and was sworn in.

Mr. Dunn asked Mr. Page if the home is now occupied. Mr. Page responded yes and explained that this situation arose at the closing. He stated that the final survey shows that the front right corner of the garage exceeds the setback. He stated that it is a corner lot and that the road has a slight curve in it. He explained that during construction the mason moved a pin a little bit perhaps for easier access with his wheelbarrow and no one noticed until the closing. So now, the homeowner is telling Mr. Page to take care of it. Therefore, Mr. Higgins asked Mr. Page to file the appeal.

Mr. Dunn explained that the applicant must be the property owner or via a notarized letter authorize another party to represent him. Therefore, Mr. Higgins needs to appear or submit another letter that is notarized.

Mr. Page left to call Mr. Higgins to ask him to appear tonight. (Note: Mr. Page did not return before the end of the meeting.)

Public portion of this hearing remains open.

5. APPEAL #898 OLLIVETT – VARIANCE

Mr. Dunn stated that this appeal is for a property located at 713 Traver Road and is for a 16'6" variance from minimum center of the road setback for location/construction of a covered front porch on home on property. The file contains:

- Notarized letter from Mr. Ollivett authorizing Mr. Alex Dixey to act on his behalf
- Planning Board recommendation: positive recommendation
- Fire Advisory Board recommendation: no recommendation as there are no fire or safety issues
- Affidavit of publication in The Poughkeepsie Journal dated 6/22/07
- List of adjacent property owners who were notified of this meeting
- Plans from contractor with photos

Mr. Alex Dixey, 592 Sand Hill Road, Gardiner, NY 12525 was present and sworn in.

Mr. Dixey explained that this appeal is to construct a porch that will give Mr. Ollivett the opportunity to sit outside and feed the birds and enjoy the fresh air. He stated that Mr. Ollivett is elderly and has limited mobility. He noted that they are proposing a covered porch and stated that his residence was built in 1946 pre-Zoning. He stated that they are requesting a 16'6" variance.

Mr. Dunn asked how deep the proposed porch is. Mr. Dixey explained that the house is 50'11" and the porch will be 8' deep.

Public Hearing opened.

Ms. Karen Haight, 717 Traver Road, Pleasant Valley, NY was present and sworn in.

Ms. Haight stated that Mr. Ollivett is her uncle, that she lives in back of her uncle, and that all of the neighbors have signed a petition stating that they are in favor of him being able to have a porch to make it more accessible for him to be able to be outside. She stated that there is a bank in front of his house so he's not in any danger from a car driving off the road.

Mr. Dunn stated that he did a site visit and pulled into the driveway for a quick look around. He asked about the possibility of constructing the porch on the back of the house. Ms. Haight stated that it is very hot out there, that all afternoon it is full sun. She stated that a porch in the front of the house will provide Mr. Ollivett the chance to be outside but not in the sun. She stated that there is a small porch in the back of the house which is not useable because of the heat.

Public hearing closed.

6. APPEAL #899 STELGER DEVELOPMENT LLC – VARIANCE

Mr. Dunn reported that this appeal is for a property located at 465 Creek Road and is a request for a variance from the minimum acreage and lot width at building line requirements of a substandard lot on which location and construction of a single family residence is proposed. The file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 6/22/07
- List of adjacent property owners who have been notified of this meeting
- Referral from the Pleasant Valley Planning Board: no recommendation
- Referral from the Fire Advisory Board: no recommendation as there are no fire or safety issues
- Documentation submitted by the applicant's attorney

Mr. Richard Cantor, attorney for the applicant, was present and stated that Amy Bombadieri, of Gillespie Engineering and engineer for the project is also present and is available to answer any engineering questions. He stated that the principal of Stelger Development is also present and available to answer questions.

Mr. Cantor reported that this is an application for two area variances: one for lot area; and one for lot width. He stated that when this application was previously before the ZBA, there was a question posed by the ZBA which was not answered at that time as to whether this is a "legal lot" or whether in the alternative it was created in violation of either the Zoning or the Subdivision Regulations. He stated that they have provided documentation that answers this question and stated that this is a legal lot that was created by deed in 1960 at a point in time when there were no regulations and it has been conveyed in the same configuration from party to party most recently to the applicant Stelger.

Mr. Cantor stated that the standards for an area variance are, essentially, a balancing test which is the ZBA's judgment in weighing the advantage for the applicant for what the applicant is requesting versus the detriment, if there is any, to the neighborhood. He stated that they have tried to define what they consider to be the neighborhood and the surrounding properties, and that they have provided information taken from the Dutchess County records for properties on either side of the same side of Creek Road and also cross Creek Road for a reasonable distance.

Mr. Cantor stated that the benefit that the applicant seeks is the ability to build a house and that, absent these variances, nothing can be built on the property. He stated that it is their assertion, which they hope they have successfully documented, that there is no detriment to the neighborhood. He stated that, by way of showing the ZBA the surrounding properties and comparing them, this property is generally in character with the neighborhood. He stated that there are some parcels that are larger and there are some that are the same and some are smaller. He stated that it is a fair conclusion that the size of this property is in character with the neighborhood.

Mr. Cantor stated that they have documented with both engineering documents and Dutchess County Health documents that both waste water and drinking water can safely be provided, waste water safely disposed of and drinking water safely provided. He stated that they have documented through the Highway Superintendent that the driveway can safely be put on the property. He stated that, in fact, there are no detriments to the neighborhood.

Mr. Cantor stated that there are two more technical requirements: one is whether the variance is substantial. He stated that, if you consider that a little less than one acre is half of two acres, then you can certainly say that it is substantial. He stated that they have offered the Board discussion from the attorney who writes the editorial comments in the McKinney Law Books saying that substantiality is not merely just what the percentage is, that

substantiality goes to the issue of impact. Therefore, he stated that they argue that it is not substantial.

Mr. Cantor stated that the other technical requirement is whether this is self-created. He stated that they argue that it is not, as it is a pre-existing condition that the applicant did not create and cannot change.

Mr. Cantor stated that the statute also asks the ZBA, if it is otherwise inclined to say yes, to give the minimum variance that achieves the purpose without hurting the neighborhood. He stated that given that these are bulk requirements, this is the minimum requirement – there is nothing less that would allow the applicant to build.

Mr. Cantor stated that they have included a discussion that, even if the ZBA were to say that the variance is substantial, the courts are clear that if in the balancing test there is no detriment to the neighborhood, even if the variance is substantial it should nonetheless be granted.

Mr. Cantor expressed their hope that they have satisfied the Board with their submissions to substantiate under the statutory balancing test that there is no detriment and that this applicant needs the variance or else he's stuck with a vacant piece of land. He added an additional point that when the appeal was last before the ZBA there was some discussion about an old shack or cabin on the rear of the property. He stated that since that time a demolition permit was obtained from the Town and the structure has been removed and, therefore, should no longer be an issue.

Mr. Vogt asked how this current application differs from the original application that was made to the ZBA. Mr. Cantor replied that the requested variances are the same. Mr. Vogt asked about the size of the building and if all the pertinent information is still the same. Mr. Cantor replied that it is all the same. Mr. Vogt asked what the outcome of the initial application was. Mr. Cantor stated that the initial application was denied by the ZBA and, thereafter, by stipulation signed by Judge Pagonas that earlier decision was rescinded and it was agreed that they would have a *de novo* hearing – an entirely new hearing and that the ZBA would make an entirely new decision.

Mr. Vogt asked about the house or cottage that was demolished. Mr. Cantor stated that it was demolished with a demolition permit. Mr. Vogt noted that when the application was first put before the ZBA that structure was part of the property and that even though it has been removed it should still be part of the application. Mr. Cantor stated that it is not part of the application and that the variances being requested are the same. He stated that some of the information presented to the Board is different, that some of the questions previously asked and not answered are now answered in this documentation, such as the question as to whether this is a legally created lot. He stated that one of the factual circumstances that changed is that the house or cabin has been removed and so no longer complicates the question.

Mr. Mike Stellini, owner, 1 Limback Road, Hopewell Junction, NY, was present and was sworn in.

Mr. Dunn asked if the square footage is going to remain the same, if he is putting the same house on the site. Mr. Stellini stated that it is pretty much the same house, that it has been

reduced in height and width from the original design. He stated that it is a 1500 square foot raised ranch with a 2 car garage and an unfinished basement. He stated that the finished living area is 1500 sq. ft. He stated that the original design was about 1700 sq. ft.

Mr. Dunn asked about the water and septic system. Mr. Stellini stated that the septic has been approved by the Board of Health, that it is a White Knight water treatment system that treats the water before it goes to the leach fields. Mr. Feldweg pointed out that it is not in the ZBA purview to consider the septic system.

Mr. Feldweg asked about the house size on the map – 50' x 28'. Mr. Stellini replied yes. Mr. Feldweg noted that he is well contained within the lot as far as size and that the only thing in contention is the building line and the size of the lot on a pre-existing standard parcel. Mr. Stellini concurred. Mr. Feldweg stated that it is pretty straight forward.

Public Hearing open.

Mr. Charles Jensen, 459 Creek Road, Pleasant Valley, NY, was sworn in.

Mr. Jensen stated that this is an instant replay of the last application and that he's now hearing from an attorney that there's no impact to the neighborhood. He stated that as part of the neighborhood he's very concerned about that and he's asked if he can request a postponement so that he can review documentation supplied by the applicant's attorney. He stated that he would like to review the documentation to see what he is concluding regarding no impact to the neighborhood. Mr. Dunn conferred with Board members regarding this request for a postponement. Mr. Feldweg stated that these applications are a matter of public record through FOIL and that the neighbors have a certain responsibility prior to the meeting to review any documentation. He stated that he does not know the answer to whether the Board has the authority to grant a request for a postponement and asked where Mr. Jensen's property is in relation to this application and what his objections are.

Mr. Jensen stated that he's the adjacent neighbor, a 2.38 parcel, and pointed out his property on the map. He pointed out the area on the applicant's property that is flooded almost throughout the year. He stated that during creek overflows the area is completely flooded. He stated that during the last flood the entire back portion of the property was flooded. He stated that all of that water flows on his property. He pointed out the area where their proposed leach fields will be and is a major concern to him. He stated that he does not know if plans have changed, but in the last application they had curtain drains on the other side. He stated that he's extremely concerned about the size of the house, about the septic system itself, and where the runoff will go. He reiterated that pretty much every rain storm they get water runoff from the applicant's property into their yard, which is not a problem when it is plain runoff, but when it's flooding out of their distribution field from their septic, it is a problem.

Mr. Jensen reported that his research on the White Knight system is that it sounds wonderful but that the maintenance program on this particular system is extremely rigorous. He understands that the builder will build the system and when they leave and sell the house, he has no guarantees that people who move in there will maintain the system. Normally, he stated that he does not know whose responsibility that would be, but when it is his yard that's going to be taking the brunt of whatever is coming out of this system, it is his concern. He stated that this is an impact to his house. Further, he stated that he's concerned about runoff

from the property just from the construction. He stated that certainly with this distribution field, what he considers to be a swamp – a wetland – is a major concern of his.

Mr. Jensen stated that he is concerned about the size of the house, that it seems like a large house for the size of the property. He noted that the original structure was 600 sq. ft. and that his understanding is that the regulations require them to only enlarge by 50% and also noted the 1000 sq. ft. minimum. He noted that they are going 500 sq. ft. over what would be the minimum construction including an unfinished basement. He stated that he's concerned that it will become living space and that the septic system proposed, which is for a 2 bedroom house, is not actually going to be adequate for the size of the house that will be there.

Mr. Jensen stated that he's also confused about the Board of Health's recommendation because it seems that the Board of Health is not considering this to be a wetland. He stated that he does not know when they did a site visit, but that if they came on any day of the year, they would see that the area is flooded almost continuously – that it is a swamp back there.

Mr. Feldweg stated that there is some pretty substantial documentation that has been submitted to the ZBA that delineates the 100 year flood and the location of the SDS.

Mr. Cantor stated that Ms. Bombadieri can address the engineering issues.

Mr. Jensen asked if this is the original application. Mr. Dunn stated that this application has a new number. Mr. Jensen stated that they were told that this would be an application for the same exact variances. His concern is that there is a lot more documentation being submitted and that their understanding was that it was an application for the same variance. He stated that he didn't realize that they would submit documentation showing that he, as a neighbor, would not be impacted. Again, he asked for a postponement so that he can review the entire application and documentation to see what is being proposed.

Mr. Dunn stated that he's inclined to proceed with the appeal tonight, firstly because the courts have so ordered, and secondly the Board is not in the right by continually postponing this appeal. He stated that a decision may or may not be reached this evening but that he would like to speak with Ms. Bombadieri even though the ZBA does not have any decision on the septic system. He stated that the applicant has the right to use the land and that the ZBA should move forward to a decision on whether he can use it in the proposed manner.

Mr. Vogt suggested that the Board should hear all the information regardless of whether a decision is reached tonight. He would like to hear all the information and is in favor of moving forward tonight.

Mr. Feldweg stated that the only issues before the ZBA tonight are the variances of the substandard lot size and the dimension at the building line. As far as the square footage of the house is concerned, he stated that as long as the applicant in an R-2 Zone brings it up to a 1,000 sq. ft. minimum, he has complied with the regulation of the zone. The other issues – septic, water, etc. – is not under the ZBA's purview. Mr. Feldweg noted that the applicant must get a building permit from the Town and the Town will not issue a building permit if the Code enforcement officer finds that the sewage disposal system is in a wetland or that there are issues with the flood plain. He again stated that it is not the ZBA's authority to be involved with that portion of the application. Mr. Dunn agreed and stated that he wishes to

ally some concerns. Mr. Feldweg pointed out that there are the appropriate agencies that will do that – the Health Department, the Building Department. He stated that the only thing the ZBA is talking about tonight are the two variances and agrees wholeheartedly to proceed with the hearing.

Mr. Jensen asked if the applicant is required to file for a variance on the size of the house because it is more than 50% larger than the original structure. Mr. Dunn responded no because it is not being built on the same footprint. Mr. Feldweg stated that, in compliance with an R-2 area, the minimum is 1,000 sq. ft. So, if the applicant were applying for a 900 sq. ft. house, he would have to apply for a variance. Mr. Jensen stated that his interpretation of the regulations is that it is a pre-existing structure that can only be increased by 50%. Mr. Dunn again stated that it is not being built on the same footprint. Mr. Jensen stated that they get away with that because the footprint is in the flood plain – they cannot build where the structure used to be and therefore they do not have to comply with that regulation. Mr. Dunn stated that one cancels out the other.

Mr. Ken Evans, 469 Creek Road, Pleasant Valley, NY, was present and sworn in. Mr. Evans pointed out his property on the map. He stated that he was present at the original hearing for the original application. He recalled that with an existing structure, the new house can only be 50% greater in size no matter where it was built on the property. But now, he stated, they have torn down the original structure and Mr. Cantor is now saying that, therefore, it is no longer an issue. He stated that this does not make a lot of sense to him and that it implies that if he wants to build a new house, he would only need to tear down the old house and come get a variance and get a bigger house. He stated that to him that's not justice.

Mr. Dunn explained that the reason it was torn down was because it was probably hazardous and was in the flood plain. He explained that documentation has been submitted that proves that this lot is a legal lot – that it predates Zoning. Mr. Evans stated that his property was part of that subdivision, so he is aware that it is legal. Mr. Dunn explained that now the question is where to place the house and what variances are required and that the ZBA's responsibility is to weigh the benefit to the owner with the detriment to the neighborhood.

Mr. Evans stated that the benefit to the applicant will be monetary because he's building it to make a profit, whereas for the neighbors in the community that new house on that property will make the existing congestion worse. Further, he stated that this new house that will be almost on top of him, that when he looks out his bedroom window at a house right there. He stated that this is a detriment to him, to Mr. Jensen, and to the people across the street. He stated that if they had not torn down the old structure, it probably would have been washed away in the last flood. He stated that there's a lot of water that flows through that property and that he does not know what kind of septic system could have withstood that flood unless it would be a concrete wall.

Again, Mr. Dunn reminded the public that it is not the ZBA's purview to decide engineering matters or issues of wetlands or flood plains. Mr. Evans asked what the next step is if the variances are granted. Mr. Dunn explained that the applicant must go to the Planning Board for a wetlands permit. Mr. Friedrichson explained that the Planning Board will be involved in terms of the wetlands permit and that he is involved regarding the flood plain and, ultimately, the building permit.

Mr. Gerstner asked if he built his house or if he bought it. Mr. Evans stated that his father-in-law built the house. Mr. Gerstner asked if there was any opposition from neighbors when the house was built. Mr. Evans stated that it was built in 1960 and there weren't many houses around at that time. He stated that he has lived there since 1978.

Ms. Christine Jensen, 459 Creek Road, Pleasant Valley, NY, was present and sworn in. She asked what recourse they have once the innocent person moves into that house and we have the next flood and we have refuse and waste in her backyard – what is her recourse. She stated that she does not feel that the ZBA is protecting her interests in the long run if the Board allows this project to go through. She stated that she understands that the ZBA is not the Board of Health and that they are not dealing with the septic system and the waste, etc., but she wants to know what her recourse is when she has her two little children and they cannot play in her own backyard and when she cannot resell her house. If it's in the interest of everybody, she stated that the Board needs to consider these issues even if it is not their job. Further, she stated that she does not understand how the Board of Health can do a site visit on one day and make a decision. She reiterated her husband's statement that it is a swamp back there, and that the Board of Health came out in the fall in October or November. She stated that if they did a perk test, of course it perked as there is water on the surface there. She stated that right now you cannot live back there, that the only thing that lives back there now is ducks – that's how much of a swamp it is.

Mr. Dunn stated that he would assume her recourse would be to get legal counsel. He stated that if the Health Department determines that they can put in a system that can handle their waste, this Board cannot tell them that they are wrong. Ms. Jensen concurred that she also cannot tell the Health Department they are wrong but she emphasized that she lives there and she sees what goes on there everyday. Further, she stated that she does not have the resources to hire an attorney. She emphasizes that this is an environmental impact – it's a health impact – and something needs to change.

Mr. Feldweg stated that the assumption Ms. Jensen is making is that something is going to go wrong. Ms. Jensen stated that it is an assumption that she needs to keep in mind when she sees how the water runs through their property and off their property onto her property. And she pointed out that it does not just run onto her property but runs right straight into the creek. And she stated that the creek rises and cleans everything out again.

Mr. Feldweg asked where her sewage disposal system is located. Ms. Jensen stated that it is well above the flood plain. Mr. Feldweg stated that everybody is assuming that the worst case scenario is going to happen and from the information that has been provided this case has been looked into. He stated that the Board is dependent upon the Board of Health, that is their job. Nobody on this ZBA can design a septic system, so he noted that the Board confers with people who do this. And before the building permit is issued, he stated that Mr. Friedrichson will be sure that he receives confirmation that the septic system as designed will work in that particular application. He stated that the only alternative is for somebody else to own land who does not want to build a house on it, and that they are hard to find those lots in Pleasant Valley now. Ms. Jensen stated that if they are interested in selling, she would be interested in talking to them about it.

Mr. Friedrichson stated that he has the Board of Health's report.

Ms. Amy Bombadieri, engineer with Gillespie Associates, 847 Route 376, Wappingers Falls, NY 12590 was present and sworn in.

Mr. Dunn asked for information about the White Knight septic system and if there is a way that Ms. Bombadieri can allay the neighbors' fears. Mr. Cantor asked Ms. Bombadieri to report on what she did to design and locate the system, what issues she considered, and what the Health Department considered in reviewing their application.

Ms. Bombadieri explained that, first, they look at the location of surrounding wells to find the best possible location for the septic system. Based on that information, she reported that they sited the septic system in the lower portion of the lot in front of where the cabin was. She made the point that the system is planned for in front of where the cabin was, not behind it. Further, she stated that it is partially in a flood plain and that the Health Department allows you to fill. She stated, therefore, as long as the bottom of the trench is higher than the elevation of the flood plain, the Health Department will accept it. She stated that they are proposing fill to raise the bottom of the trench so that, if it does flood, it will not impact the piping.

Ms. Bombadieri explained that the White Knight system is designed so that, typically, the effluent goes to the septic tank, the solids settle, and then the grey water goes into the White Knight system. She stated that the White Knight pumps in oxygen and a type of bacteria to further clean the water. She stated that the runoff that is going into the septic system is fairly clean as far as bacteria is concerned and, therefore, the amount of bacteria that goes into the leaching area is not what a normal septic system would have.

Ms. Bombadieri stated that there are maintenance programs of varying duration offered by White Knight.

Mr. Maucher asked if anything has been changed since the last time this application was submitted with regard to the White Knight system. Ms. Bombadieri responded absolutely not, that is the system that was approved in 2005 and is the same as the last time. Mr. Gerstner asked what happens if the owners don't keep up with the required maintenance. Ms. Bombadieri stated that it would not fail in the sense that it would back up, rather it would fail in the sense that not maintaining it would mean not providing the required bacteria cartridge. Therefore, she stated that it would end up working almost as a second septic tank.

Mr. Vogt asked about the septic system in relation to the flood plain – how high above the flood plain the piping will be. Ms. Bombadieri stated that the bottom of the piping of the primary area will be 2' above and the top will be 4' above the flood plain elevation. She stated that it will be a little less at the expansion area, but nonetheless they will have a separation from the flood elevation to the bottom of the trench. Mr. Vogt asked if they will be encroaching on the wetlands. Ms. Bombadieri stated that, no, they got the elevation of the flood plain based on the firm's mapping and added fill based on that. She stated that she does not know if they are completely sure where the area is that the septic is going to be in. Mr. Cantor stated that the approved septic plans are in the packet that was submitted.

Mr. Evans inquired about the exact location of the septic system. Ms. Bombadieri pointed it out on the map. She noted that the Health Department requires a 100' separation from standing water and pointed out that line on the map. She noted that the Health Department granted a variance from that separation. Mr. Evans asked what is considered standing water.

Ms. Bombadieri responded that it is any surface water that is contained in an area. Mr. Evans pointed out on the map the area that is wet any day of the year and stated that they are within the 100'. Mr. Vogt pointed out that Ms. Bombadieri stated that the Health Department granted a variance for the system and that the ZBA will never go against the Health Department as they know their purview.

Ms. Bombadieri added that if it is not a regulated wet area, they are allowed to fill it so that it won't be standing water. She pointed out on the map the area that will be filled. Mr. Vogt asked if they will be filling the area that is normally wet. She responded yes.

Mr. Evans asked if there will be any piping in that area and noted that there's a natural spring in the area which fill will not be able to remove. He asked if there will be any piping to divert that into the creek. Ms. Bombadieri pointed out on the map the location of a curtain drain that will capture anything running off and stated that the fill will raise the pad so that water will not enter or will be less likely to enter the septic area. She pointed out the only area that will be installed with piping and the area that will be filled.

Mr. Evans stated that there is a drain that comes underneath the road and asked how that water will be diverted as he does not want that water to runoff onto his property. Ms. Bombadieri stated that they are building a swale and that there is a railroad retaining wall. Mr. Evans stated that the railroad retaining wall will not stop any water. Ms. Bombadieri pointed out that they are extending the swale beyond the railroad retaining wall and noted that they are attempting not to direct the runoff onto the adjoining property. She stated that if the swale needs to be extended that it would be a minor adjustment to make.

Mr. Evans asked what recourse he has if the planned water management system fails and water ends up running off onto his property. Mr. Vogt stated that they would have to take that to the Health Department for the appropriate action. He reassured Mr. Evans that builders take precaution not to create problems that backfire in the future. Mr. Maucher stated that recourse is to take it to the Town, the Zoning Administrator, or his attorney. Mr. Friedrichson stated that this one-family house plan is not subject to site plan review. Mr. Maucher stated Zoning Administrator issues the C.O. based on assurance that everything being properly done. Mr. Friedrichson responded, no, that he bases his C.O. on the fact that he has the proper pieces of paper in his hand. Further, he stated that the building inspector is enforcing the provisions of the NYS building code.

Mr. Maucher asked if there is something in place now that prevents the runoff coming onto his property. Mr. Evans responded no. Ms. Bombadieri discussed the possibility of extending the swale.

Mr. Dunn asked if anyone else from the public would like to speak to this application. No one spoke.

Mr. Cantor responded to the comment with regard to the house "would be right on top of us." He noted that this house satisfies the Code side yard setback requirements. He stated that when this matter was first submitted it asked for a 3rd variance for side yard setback. Before the ZBA made its decision the first time around, he noted that the house was reduced to eliminate the need for a side yard variance. So, he stated, that this house is sufficiently separated on both sides according to the distances required by the Pleasant Valley Zoning Code.

Mr. Cantor stated that there is an odd logic that the neighbors are offering. He stated that they are offering what courts call “generalized objections.” He stated that in the face of engineering information, in the face of the Health Department approval, they are offering their generalized objections without any support whatsoever. Further, he stated that in making the assumption therefore based on the generalized objection there’s a problem and what are you going to do about the problem, when in fact the only probative information that is before the Board is the engineering and Health Department information that indicates that both for waste water and water supply this property can meet all of the requirements.

Mr. Dunn asked if anyone has any further questions or comments. No one spoke. Mr. Dunn closed the public portion of the hearing.

DISCUSSION

1. APPEAL #891 – TODD VARIANCE

Mr. Dunn noted that this is the second time this has been before the board, the first time the applicant was building right on the lot line. Mr. Vogt stated that the neighbor is extremely far away and noted that Ms. Rubenstein previously expressed a concern about how the applicant could maintain the structure without going onto the neighbor’s property. Mr. Feldweg concurred with that concern. Mr. Vogt did a site visit and discussed the driveway configuration.

Mr. Feldweg stated that he visited that site and, considering the particular topography of the neighbor’s property, he finds it a reasonable request. He stated that he does not think anything in the neighborhood will be compromised by the applicant keeping the garage far enough from the property line so that he can maintain it. He did not see any other place on the property that he could put this garage. He noted that the turning radius is tight for a full sized car. Based on these observations, he stated that he sees no harm to the neighborhood and that the advantage lies with the applicant. He proposed that the right side 12’ variance be granted.

Mr. Dunn read the worksheet (original on file) into the record: the benefit to the applicant is greater because, due to the topography of the property, there is no place else on the property to locate the garage.

Mr. Dunn: **MOTION TO GRANT THE VARIANCE; SECONDED R. VOGT; VOTE TAKEN AND APPROVED 5-0-0**

2. APPEAL #895 FLAHERTY – SPECIAL USE PERMIT

Mr. Vogt raised the issue of “stock in trade” – of storing products in her home. He stated that that has always been an issue for this Board. He stated that he does not have a problem with a home occupation, but there is a problem if she is creating a showroom.

Mr. Dunn stated that he does not think she’s talking about creating a showroom, but rather about storing some things temporarily in her garage. Mr. Vogt stated that she’s talking about products that she sells to her clients. Mr. Gerstner recalled that she stated she would be bringing product to her clients’ home to show them. Mr. Vogt considered this to be stock in

trade. Mr. Dunn suggested that she would have samples to show her clients. Mr. Vogt did not have an issue with furniture being shipped to her home and stored for some few hours until they could be delivered to the client's home. However, he does have a problem with product being stored at her house. Mr. Vogt defined stock in trade as keeping items for sale in a residence, and he does not have a problem with a tractor trailer making a delivery once a month. Mr. Feldweg stated that he understands Mr. Vogt's point about stock in trade but that he cannot picture this type of business having a dramatic amount of stuff lying around as these products – house furnishings - are very expensive and you don't have a bunch of it lying around that someone hasn't committed themselves to purchase or that will be sold reasonably soon.

Mr. Feldweg mentioned that none of the neighbors appeared at the meeting to voice an objection to the appeal. He stated that he has no problem with the appeal.

Mr. Feldweg asked whether a short form EAF has been completed for this application as it is needed for a Special Use Permit. Mr. Dunn stated that the file does not contain an EAF. Appeal has been adjourned for submission of an EAF.

3. APPEAL #896 ROWE – SPECIAL USE PERMIT

Board noted that Mr. Rowe has chosen to return to a future ZBA meeting in the hope that a full Board will be present.

4. APPEAL #897 CARRINGTON CONSTRUCTION – VARIANCE

Board noted that Mr. Carrington had left to contact the owner but has not returned. Therefore, this appeal is adjourned.

5. APPEAL #898 OLLIVETT – VARIANCE

Mr. Maucher read the worksheet into the record. A 16'6" variance is being requested. The benefit to the applicant is greater than the detriment to the neighborhood. Therefore, the balance is in favor of granting the variance.

Mr. Maucher: **MOTION TO GRANT THE VARIANCE**

SECONDED BY T. GERSTNER

Discussion: NONE

VOTE TAKEN AND APPROVED 5-0-0

6. APPEAL #899 STELGER DEVELOPMENT LLC – VARIANCE

Mr. Feldweg stated that as far as he's concerned the applicant has answered any questions that he could possibly think of and has given all the right reasons for granting this variance. Further, he expressed his opinion regarding substandard lots – that the Town is stuck with them and if you can meet all the other requirements of the Zoning Ordinance then something has to be done with substandard lots. He stated that there have been buildings on substandard lots in the Town as long as he's lived in the Town. He stated that he has no problem with this application and that the ZBA should not get into the issues with the septic, the water, the property values because when anyone builds a house next door to someone else there is an impact. He stated that if he were to drill his well and the guy next door goes

dry, then he's out of luck and that's the way it is. He stated that the same thing happens with the views – if you don't want to look at a house next door, then buy the lot.

Mr. Dunn concurred. Mr. Feldweg stated that he read the original application.

Mr. Vogt raised the issue of the existing structure that was demolished and the issue of continuity. He stated that there was a building on the property that carries with the property and, therefore, weighs into the information supplied and has to go with the lay of the land. Therefore, he stated that he still has it as a bearing issue.

Board discussed the increase in size to the minimum 1,000 sq. ft. and the fact that the lot is now vacant and that the courts ordered the ZBA to rehear the application. Mr. Feldweg stated that this application is on bare dirt today and that he has no prior knowledge of what was on the site as he did not hear the prior application.

Mr. Maucher stated the ZBA reviewed and denied the previous application. He stated that from what he heard tonight, there is nothing that is significantly different from the previous application. He stated that applicants cannot keep submitting the same application repeatedly hoping for a different answer if they have not made some substantial change to the application. He noted that there has been no substantial change to the application.

However, Mr. Gerstner noted that the judge overturned the last decision and ordered this Board to redo the hearing. Mr. Maucher asked what the Board's option is now – does the Board go through the decision process again. Mr. Gerstner stated that according to the judge this is a brand new application. Mr. Maucher asked if the Board got the wrong answer the last time. Mr. Dunn responded no, the ZBA made its decision and the judge ruled against the Board.

Mr. Dunn stated that this is an application for a 2 bedroom house and that the neighbors would like this parcel to be a forever wild piece of land, which is unlikely to happen in this locale. He noted that Mr. Stellini has reduced the square footage of the house. Mr. Maucher stated that his concern was never the size of the house – that his concern was the lot size being in an R-2 Zone. He stated that the most recent purchaser of the lot knew the Zoning requirements of the lot when he purchased it. He stated that the purchaser knew he was buying a substandard lot and now wants to get a variance that says the Code does not apply here for some reason.

Mr. Dunn noted that it is a substandard lot that predates Zoning. Therefore, he asked what you do with it. Mr. Maucher noted that a neighbor could buy it and increase the size of their own lot. Mr. Vogt noted that there are landlocked pieces of property in the Town all the time. Mr. Stellini noted that they are proposing to build a small house. Mr. Vogt stated that a 30' x 40' house is a house of the 1950's. Mr. Dunn mentioned that sale-ability of the house and what it would do to the neighbors – that it has brought down the neighborhood because it is so small. Mr. Vogt noted that the original application included the side yard setback variance, but that is no longer required due to the reduced size of the house. He noted that this is one of the changes in the current application.

Mr. Friedrichson stated that this application went to the appellate court under the Article 78 proceeding. He noted that Judge Pagonis, for reasons to same time and money, ordered that the application can be resubmitted as a *de novo* – a new hearing of the matter as if the

original hearing had not taken place. Therefore, he stated that all of the Board's discussion of what they did last time is not relevant and is contrary to the judge's ruling.

Mr. Dunn read the worksheet into the record (original in file). The requested lot width variance is 102.88'. The requested area variance is 1.02 acres. The benefit to the applicant is greater than the detriment to the neighborhood. Therefore, the balance is in favor of granting the variance because the lot would be worthless without the variance.

Mr. Dunn: **MOTION TO GRANT THE APPEAL; SECONDED BY E. FELDWEG**

T. Gestner:	In favor
E. Feldweg:	In favor
R. Maucher:	In favor
R. Vogt:	Abstain
J. Dunn:	In favor

7. MINUTES

Mr. Gestner: **MOTION TO APPROVE MINUTES OF MAY 2007 ZBA MEETING; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 5-0-0**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 10:05 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the June 28, 2007, 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 26, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on July 26, 2007, at the Pleasant Valley Fire House, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:32 p.m.

Members present: John Dunn
 Helene Czech
 Rob Maucher
 Ronald Vogt
 Ed Feldweg, Alternate

Members absent: Tim Gerstner
 Christina Perkins
 Lisa Rubenstein

1. APPEAL #895 FLAHERTY – SPECIAL USE PERMIT

Mr. Dunn noted that this appeal is a continuation from last month and stated that the applicant has submitted the EAF.

Public hearing reopened.

Ms. Alecia Flaherty was present and was previously sworn in.

Mr. Dunn asked for clarification on the deliveries to her home. Ms. Flaherty estimated that approximately once a month she receives deliveries of large pieces of furniture via 18-wheel tractor trailer. She stated that most of the companies that she does business with will deliver the products directly to her customers and that she is currently negotiating with the few companies who continue to insist that they deliver to her. She also stated that she does not know for sure whether the trucks are 18-wheelers as they may be smaller than that.

Ms. Czech asked if access to the applicant's home is adequate to accommodate an 18-wheeler. Ms. Flaherty responded yes, that the access is adequate. She noted that she has had products delivered to her, that the trucks park in front of her house, unload, and then leave. Mr. Dunn recalled that the cul-de-sac is spacious.

No other member of the public spoke.

Public hearing was closed.

2. APPEAL #896 ROWE – SPECIAL USE PERMIT

Mr. Dunn noted that this appeal was adjourned from last month at the applicant's request due to the requirement that this application be approved by a super majority of the ZBA members. He noted that this requirement results from the DC Department of Planning's negative recommendation on this application. Once again, only 5 members of the ZBA were present. Mr. Dunn discussed with the applicant the option to again adjourn this appeal to next month in the hope that more members of the ZBA will be in attendance. The applicant

asked to adjourn the application till the September 2007 ZBA meeting as he will be out of the country in August 2007.

Mr. Feldweg: **MOTION TO ACCEPT THE APPLICANT'S REQUEST TO ADJOURN THIS APPEAL TO SEPTEMBER 2007 ZBA MEETING; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 5-0-0.**

3. APPEAL #897 CARRINGTON CONSTRUCTION – VARIANCE

Mr. Dunn stated that this appeal is a continuation from last month.

Mr. Steven Page, of Carrington Construction, was present and was previously sworn in.

Mr. Dunn read into the record a notarized letter dated 7/23/07 from Daniel Higgins, owner and applicant, authorizing Mr. Steven Page to appear at the ZBA hearing on his behalf and to represent him.

Board members had no additional questions for Mr. Page.

4. APPEAL #900 FERESE – VARIANCE

Mr. Dunn stated that this is a request for a variance from the minimum side setback requirement for the location and construction of a deck on the residence.

Mr. Steven Ferese, 110 Pine Hill Road, Pleasant Valley, NY, was present and was sworn in. Mr. Ferese explained that there is an existing 6' x 4' deck on the house that is falling down. He stated that he is proposing to replace it with a new deck and is requesting a 7' variance.

Mr. Dunn stated that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 7/20/07
- Referral from the Planning Board: no recommendation
- Referral from the Fire Advisory Board: no position as it presents no fire or safety concerns
- List of adjacent property owners who have been notified of this hearing

Mr. Maucher asked if there is a house on the adjacent lot. Mr. Ferese responded no. Mr. Dunn asked who the property owner is. Mr. Ferese responded that it is Family Circle, Inc. and explained the proportions of that property. Mr. Dunn asked for his opinion on whether it would be wide enough to accommodate a house. Mr. Ferese offered the opinion that it is not wide enough. Mr. Feldweg also noted that there is a dramatic change in elevation on that parcel. Mr. Ferese pointed out that there would be no right-of-way onto the adjacent property off of the road.

Public hearing opened.

No one spoke.

Public hearing closed.

5. APPEAL #901 HOPPER – VARIANCE

Mr. Dunn stated that this application is for a variance to build a 2-story home on their current foundation which would exceed the setback allowance on the left side of the house due to the height of the additional story. Therefore, the applicant is requesting a 6' 2" variance.

Mr. Dunn noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 7/20/07
- Referral from the Planning Board: no recommendation
- Referral from the Fire Advisory Board: no position as there are no fire or safety concerns
- List of adjacent property owners who have been notified of this hearing

Mr. John M. Hopper, 19 Martin Road, Pleasant Valley, NY, was present and was sworn in.

Mr. Dunn asked if Mr. Hopper intends to build a second story onto the existing house or if he is planning on razing the existing house and building an entirely new 2-story structure. Mr. Hopper stated that that is an option. Mr. Vogt noted that that would raise a different set of questions.

Mr. Hopper stated that if they razed the house, the new house would be the same square footage with an additional story on the top. Mr. Dunn asked if they would be operating on the same footprint if they raze the house. Mr. Hopper stated that if they save the foundation, then they would be on the same footprint, but if not, then they will build in the same spot. He stated that he discussed with Ms. Salvato the regulations regarding area variances.

Mr. Vogt stated that if they remove the foundation and then build farther over in the property, then no variance would be required. He noted that they would have an option to locate the house on the property and meet the setback requirements. Mr. Hopper stated that he is unsure about the other lot line if they move the house over. He asked whether he would have to apply for a variance if they knew they were going to demolish the house. Mr. Vogt stated that no variance would be required if they could meet the Code requirements. Mr. Hopper stated that their initial thought was to save the foundation, but that now they are getting new information which may inspire them to start from scratch.

Mr. Feldweg and Mr. Dunn noted that the ZBA can grant the variance as applied for. Mr. Feldweg stated that, if the applicant decides to demolish the building, he can reapply if he finds that he still cannot meet the Code requirements. He noted that this is a valid application as submitted. Mr. Vogt concurred with this analysis.

Ms. Christina Hopper was present and was sworn in.

She stated that their application is not just to build a second floor, rather it is to take down the house and put a modular house on the foundation. She stated that they will be changing the footprint slightly and adding onto the foundation in the back to accommodate a great room. She stated that it is 150% of the existing square footage.

Mr. Feldweg clarified that this is not non-conforming – there is nothing non-conforming on this application. Therefore, he stated that the only thing to be concerned about is if they get too much house for the square footage of the land, then that is a different issue. Ms. Hopper stated that the Zoning office was not clear on whether there was a need for an area variance.

She also raised the issue of whether the existing garage is included in the calculations.

Mr. Feldweg again explained that that only becomes an issue if there is a non-conforming use. He stated that this is a permitted use in a residential area. He advised Ms. Hopper to disregard the 150% regulation as it does not apply. He stated that residential use of the property is a permitted use of the property and that the only possible issue that they could run into is building so many square feet that they would use up the ratio between the area of the lot and the area of the buildings.

Ms. Hopper stated that they want to put a modular home on the existing foundation.

Board discussed the non-conforming lot size, the regulations regarding area variance, and determined that only a height variance is required.

Public hearing opened. No one spoke. Public hearing closed.

DISCUSSION

1. APPEAL #895 FLAHERTY – SPECIAL USE PERMIT

Mr. Dunn read into the record (original on file) the EAF Part 1 (Unlisted Action) and Part 2 of SEQRA (Negative Declaration). Board determined that this appeal is an Unlisted Action and granted a Negative Declaration.

Ms. Czech read into the record (original on file) resolution to grant the Special Use Permit.

Mr. Feldweg reminded the Board to advise the applicant to get a copy of the Home Occupation section from the Zoning Ordinance so that there will be no confusion regarding what is allowed and what is not allowed and the conditions under which the Special Use Permit may be operated. He noted that the record shall reflect that the applicant shall request a copy of Section 98.24, Home Occupations, along with her Special Use Permit.

Mr. Feldweg: **MOTION TO GRANT SPECIAL USE PERMIT; SECONDED BY J. DUNN; VOTE TAKEN AND APPROVED 5-0-0.**

2. APPEAL #896 CARRINGTON CONSTRUCTION – VARIANCE

Mr. Feldweg read worksheet into the record (original on file): benefit to the applicant is greater.

Mr. Feldweg: **MOTION TO GRANT THE VARIANCE; SECONDED BY R. MAUCHER; VOTE TAKEN AND APPROVED 5-0-0**

3. APPEAL #900 FERESE – VARIANCE

Ms. Czech read worksheet into the record (original on file): benefit to the applicant is greater.

Ms. Czech: **MOTION TO GRANT THE VARIANCE; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 5-0-0.**

4. APPEAL #901 HOPPER – VARIANCE

Ms. Czech read worksheet into the record (original on file). Applicant is requesting a 6' 2" side yard setback on left. Benefit to the applicant is greater.

Ms. Czech: **MOTION TO GRANT THE VARIANCE; SECONDED BY J. DUNN**

Discussion: Mr. Vogt noted that the application is on the existing foundation and, if the existing foundation is demolished, the applicant must return for an updated variance. If the applicant modifies anything by removing the foundation, then he must either come back to the ZBA or change the plans with the building department. Also, Mr. Vogt noted that if the applicant demolishes the foundation, then he has the option of moving the house, in which case no variance may be required.

Mr. Maucher noted that the applicant is proposing to add a great room which is beyond the existing foundation. Ms. Czech noted that no setback is required for that great room. Mr. Maucher noted that they must put in a new foundation for that great room.

Board again discussed the requirements for an area variance. Mr. Feldweg helped the Board understand that the use is not non-conforming - that the lot is non-conforming - and therefore the area variance is not applicable. He stated that the use on the property in an R-O zone is residential and is conforming. He agreed that the lot is non-conforming because it lacks .5 acre. He stated that the only potential issue in an R-O zone is covering more than 30% of the lot with buildings.

VOTE TAKEN AND APPROVED 5-0-0

Mr. Hopper asked about the impact of removing the foundation. Board advised him to discuss this question with Mr. Friedrichson.

5. MINUTES

Mr. Maucher: **MOTION TO APPROVE MINUTES OF 6/28/07 ZBA MEETING; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 4-0-0.**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:30 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the July 26, 2007, 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 23, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on August 23, 2007, at the Pleasant Valley Fire House, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:31 p.m.

Members present: John Dunn
 Christina Perkins
 Lisa Rubenstein
 Bob Maucher
 Ronald Vogt
 Ed Feldweg, Alternate

Members absent: Tim Gerstner
 Helene Czech

1. **APPEAL #902 – DEARSTYNE – VARIANCE**

Mr. Dunn reported that this appeal is for a variance from minimum side setback for location/construction of storage shed on a lot in Cedar Hollow Mobile Home Park. The file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 8/17/07
- Planning Board referral – positive recommendation
- Fire Advisory Board referral – no position as there are no fire or safety concerns

Mr. Robert Dearstyne, owner of the mobile home, was present and sworn in. Mr. David Pretak, owner of Cedar Hollow Mobile Home Park, was present and sworn in.

Mr. Dearstyne stated that he purchased the home on 4/11/07.

Mr. Pretak explained the process by which they selected the proposed location on the property for the 10' x 10' shed. He explained that they no longer put the sheds up against the homes in order to mitigate potential fire hazards due to gas tanks. In addition, putting it adjacent to the house raises issues with having to move a fence and a gate. Therefore, Mr. Pretak stated that they chose to locate it farther back on the lot.

Mr. Dunn mentioned previous conversations with Mr. Pretak about trying to put the sheds on all 4 adjacent lots together – back to back. Mr. Pretak acknowledged that it would be a goal to create symmetry, but there are numerous issues on each lot that make it not possible to achieve at this time. Mr. Pretak noted that the park, over the past 5-6 years, has started to look at little bit better.

Mr. Dearstyne stated that Mr. Pretak has adequately described the current situation and rationale for the appeal.

Public hearing closed.

DISCUSSION

Ms. Perkins read the worksheet into the record. The appeal is for a 10.5' variance. The benefits to the applicant outweigh any detriment to the health, safety, and welfare of the neighborhood and community.

Ms. Perkins: **MOTION TO GRANT THE VARIANCE; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 6-0-0**

2. MINUTES

Mr. Feldweg: **MOTION TO APPROVE THE MINUTES OF THE ZBA MEETING ON 7/26/07; SECONDED BY B. MAUCHER; VOTE TAKEN AND APPROVED 6-0-0**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 8 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the August 23, 2007, 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 27, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on September 27, 2007, 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
 Christina Perkins
 Lisa Rubenstein
 Bob Maucher
 Ronald Vogt
 Tim Gerstner
 Helene Czech

Members absent: Ed Feldweg, Alternate

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #896 – ROWE – SPECIAL USE PERMIT

Mr. Dunn stated that this is an appeal for a Special Use Permit to conduct retail sales (hardware store), which will be a change from the pre-existing non-conforming use (construction business) on the premises. He noted, also, that this appeal has been adjourned a number of times and was originally on the ZBA's meeting agenda in July 2007.

Mr. Dunn noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 6/22/07
- List of adjacent property owners who have been notified
- Recommendation from the Pleasant Valley Planning Board: negative recommendation as there are concerns that the proposed retail use would produce heavier traffic, difficulties in parking, obtrusive lighting, etc. If the ZBA should grant the Special Use Permit, the applicant must submit an application for site plan approval for review and approval by the Planning Board.
- Referral from the Pleasant Valley Fire Advisory Board: concerns with the location of the proposed use on Route 44 regarding access and egress, sight distance for vehicular traffic particularly truck deliveries
- Letter from Dutchess County Department of Planning and Development: "has reviewed the referral within the framework of General Municipal Law Article 12B Section 239i through 239m. After considering the proposed action in the context of county-wide and inter-municipal factors, the Department finds the Board's decision involves a matter of some concern. The applicant is seeking a Special Use Permit in the R-1 residential zone to allow a change from one non-conforming use – a construction company – to another non-conforming use – a hardware store. The parcel in question is located on Route 44 outside of the main hamlet commercial area. The applicant is currently operating a hardware business in a storefront located in the heart of the hamlet. Increased detriment to the surroundings: according to the Town of Pleasant Valley Zoning Code 98-38, a non-conforming use may be changed to a different non-conforming use only upon determination of the Zoning Board of Appeals that the proposed new use will be no more detrimental to its neighborhood

and surroundings than the use it is to replace. In determining the relative detriment, the ZBA shall take into consideration traffic generated and hours and manner of operation. The current non-conforming use is the offices and workshop of a small local construction company. The proposed retail use will likely generate much more traffic than the existing use. These additional vehicles turning into and out of the site will exacerbate traffic congestion and reduce safety along that stretch of Route 44 and also the extension of a strip commercial. Retail businesses tend to thrive when they are conveniently located in close proximity to each other. Our historic hamlet and villages offer the desired blend of retail office and residential uses that make them successful economic and social centers. Relocating this retail business outside the hamlet center would drain a portion of the customer base from the hamlet while promoting the proliferation of auto-oriented highway strip commercial. Recommendation: for the reasons stated above, the Department recommends that the Board deny the requested Special Use Permit. If the Board determines to act contrary to our recommendations, the law requires that it do so by a majority plus one, or a super majority, of the full membership and that it notify us of the reasons for its decision.”

Mr. Dunn explained that the requirement for the super majority means that a minimum of 5 votes in favor of this appeal is required.

Mr. Kevin Rowe, Cold Spring, NY, was present and was sworn in. Mr. Rowe stated that the hardware store is a great place and meets the needs of the local people. He stated that he put together a profile of a few thoughts regarding his local business that he would like to thrive in the Town. He stated that having a hardware store is a fun place to go, that he has people coming into the store just to browse who say that they want a hardware store in the town. He stated that, historically, there has always been a hardware store in the Town of Pleasant Valley, although it has moved around from location to location. He noted that he is the 6th or 7th owner of a store at his present location. He stated that this is something that the Town has wanted for years and years and that now the store is growing because of so much local interest. He stated that most of his customers are local and that he also gets some of the contractors who are working in the Town. He stated that his store is the place where the locals want to shop.

Mr. Rowe referred to his store as the backbone and stated that a hardware store has the elements that hold the world together. He pointed out that when your toilet breaks, everyone comes to his store. Instead of going out of town, he stated that they have a place right here in Town where they can shop, get home, and get the toilet fixed. Whatever carpentry need they have, he stated that he has been great for the store and for the local community to be able to come to somewhere nearby, get the thing you need, and go.

Mr. Rowe stated that the reason they are before the ZBA is that there has been such a demand that they are bursting out of their seams in their current site. He stated that they have filled the store up with the product that the locals want, but if the product is not there, the customers will go down to a big box store, to Poughkeepsie, to another town to find what they need. He stated that, from what he’s seen, he thinks the Town is looking to grow, reshape, redesign, and have that hamlet feel that everybody wants. He stated that it’s great to have a community and a place in the center of the community is the hardware store. It has been, he noted, throughout history. He asked how far a local resident has to travel to find the parts that they really want. He asked if they have to travel a ½ hour to stand and get

frustrated in another store and come back and 2 hours later they are finally able to fix it. Rather, he suggested that they can go to a nice local little shop for their needs. He stated that a local business is supporting other local businesses. He stated that allowing them to grow and move down the road to an existing commercial building that is in the Town is only going to help the Town with more services, more product that the town's people can use and also the Town in general can use – the highway department, the Town Hall. He noted that the more services and product that they have to offer, the store is going to help the Town as well as be able to be allowed to grow with the community and keep the local money within the local community. He stated that it will keep people shopping within their local community.

Mr. Rowe pointed out the current focus on shopping and purchasing locally produced items and stated that in his store he has 9 local vendors. He stated that as his business grows, all the other local businesses will also grow.

Mr. Rowe pointed out that the building he wants to occupy will be cleaned up and will be visible and will look nice and promote more local business. He pointed out that Davies Hardware advertised on their web page that they have an 8,000 sq. ft. building that is packed to the gills with stock and materials and they have been in business 100 years. He pointed out that his inventory is growing in his store and that he is providing a service to the Town to let everyone shop locally.

Mr. Rowe stressed that "it's just fun." He stated that if people leave his store not laughing or smiling, then he stated that he has not done his job to support the local resident in his or her time of need. He pointed out that the residents' needs are getting met immediately and providing a fun atmosphere, which a hardware store should be. He stated that they now carry pipe, glass, screens, tile cutting, and wood cutting.

Mr. Rowe pointed out that saying yes to a small, local business is effectively saying no to a big box store. Therefore, the Town is keeping the local customer base local. He stated that they now have tile, kitchens, fireplaces, cultured stone, decorative door knobs, that they are like a mini home center where you can get everything locally and receive good service, too. He stated that his guys are great, that they all have been in the trades and know how to help the customers with their plumbing or carpentry needs.

Mr. Rowe stated that they have problems with flooding twice a year at their present location. He stated that April 2007 was the worst and that he has not been able to use the downstairs for any stock. He stated that he cannot store anything outside because it would get washed away. He asked how many times he can lose the inventory and still be able to run a business and make money and add on new items and services. He stated that he does not even have the room for a barbeque grill and that they are wheeling stuff in and out every morning.

Mr. Rowe stated that they have outgrown the space that they are currently in and listed other problems: flooding, no outside storage, too small. He also stated that right now the shopping center is pretty much dead, that people are going to the A&P and then driving across the street to his store. He stated that having the hardware store up the road in the new site, people are still going to drive from one spot to the other. He pointed out that everyone drives today, even inside the same shopping center. He stated, therefore, that the same amount of traffic is generated within the Town coming to his store. He stated that, whether he's in the shopping the center or out on Route 44, people are still driving from store to store to store.

Mr. Rowe noted that there has been a lot of talk at the hamlet meetings about how to make it a walking town, to get rid of the 5 lanes in the road so that people can walk across the street. He stated that he supports that happening and knows that it has been in the works for 12 years now and that he hopes it will happen in the future. He stated that he will be part of that, even though they will be just right up the road. He stated that more people will be coming to the Town and it will be a great boon not just for his business but also for the whole Town in general.

Mr. Rowe stated that right now they have about 80 customers per day coming to his store, which works out to about 8 customers per hour. He referenced a traffic study that shows 1,100 to 1,200 cars going down Route 44 between Traver Road and Rossway Road. He stated that out of the 1,200 cars, his business is not increasing the traffic as they are there regardless of whether they are coming to his store or not. He suggested that it is the same local people who travel that route to the hamlet's businesses. He stated that as his business grows his store will bring more traffic.

Mr. Rowe referenced the Taconic Homes development that plans 252 units right on Route 44. He noted that most families today are 2 car families and if they have children who are driving age, there could be 3 or 4 cars per family.

Mr. Rowe read from a traffic count on Route 44 in Pleasant Valley that reports 12,000 cars per day, which has gone up 50% in 5 years just from the development in Town.

Mr. Rowe stated that included in the booklet are print outs from the Poughkeepsie Dutchess County Transportation Council going back the last 4 times that they published a report. He pointed out how it went from about 9,000 per day up to 14,000 cars per day. He said that right now he's at 80 customers per day and that, if his store grows to 200 customers per day in a 10 hour period, that would be 20 cars per hour. Therefore, he calculated the traffic percentage increase 1.6% of cars turning in and out of their store. He said that if they were to grow up to 500 cars per day, which would be a phenomenal business that he would love to have, it is only 4% of the traffic that is actually going up and down Route 44 today.

Mr. Rowe referenced Taconic Apartments with 2-car families going up and down the road twice a day to and from work that is adding 1,000 cars per day on Route 44. He stated that that is many more than what he is proposing to do. He stated that it is safe to turn in and out of Bovee's building going East or West every 5 minutes with no traffic congestion there.

Mr. Rowe stated that there are many assets in the Town, existing buildings that need to be used to help the community to grow. He said there are a lot of vacant buildings in Town that are vacant, unused office and retail space, that need to be filled up to help the community. He stated that people come to the Town for the services that are provided whether in the center of the Town or in an existing building. He said that Brian Bovee's building is a great location, that he has done a great job of cleaning it up, and that he would only be adding a little bit to what he has the building zoned for. He noted that it is zoned for office, warehouse, showroom, and storage. He said that all they would be adding is a small portion of the building for retail, that the office, showroom, and storage will all be staying the same. He said they will only be adding a few thousand square feet of shop floor to make it into retail space. He stated that the change in the use is not very great at all. He stated that Bovee is light industrial use, which is like some of the other construction yards in Town already.

He stated that he runs a clean operation down at his store now and will do the same at the new site. He stated that he wants to be able to grow, provide more services in Town, and keep it neat and clean and not have to look for another location. He stated that he is utilizing an existing building in the Town and making good use of it to grow from within the Town.

Mr. Dunn made a correction, stating that the building is in a residential zone, that it is not commercial but is a pre-existing non-conforming use. He stated, therefore, that there are more tests that have to be met for this appeal than if Mr. Rowe were just building a home on the site. Mr. Dunn pointed out that it is not in a commercial zone, but is an R-1 zone.

Mr. Rowe asked if, therefore, the commercial building must be torn down and only a house can go on that site or can the building be preserved as one of the older buildings in the Town. He asked if the Town would like to use that building for a less obtrusive use than a construction company. He pointed out that if Mr. Bovee sells the building to another construction company, they could run a bigger business out of there and have something that could look worse than what is there now. He suggested that a lighter use, such as his small retail shop, would be closer to the residential R-1 zoning. He stated that if the Board says nothing can go on that site except for a house, then there is a building that is useless and the site would be devalued. He stated that it does not make any practical sense. He likened that to someone coming to a person's house and telling them that they cannot use their house anymore, that it must be torn down and used as pasture land. He asserted that the commercial building on that site is part of the fabric of Pleasant Valley for the last 51-52 years and asked why not use it for a local business and keep the business in Town and help support the community and let it grow within the Town.

Ms. Rubenstein asked Mr. Dunn if, previously, Mr. Bovee appealed to the ZBA for an expansion of a non-conforming use. Mr. Dunn responded, yes. Ms. Rubenstein asked if that history is available for the Board's review. Mr. Dunn stated that it would be in the files. Mr. Vogt recalled that there was a signage issue. Ms. Rubenstein suggested that before the Board makes a decision, current Board members who were not on the Board might be interested in reviewing the minutes of whatever changes were previously approved to that site. Mr. Vogt recalled that there was an issue with the 50' sign on the roof of the building, that the real issue was the size of the sign. Mr. Rowe stated that he does not plan to change the signage. Mr. Vogt explained the history with regard to the sign and that there were no other changes made to the site. Ms. Rubenstein expressed her satisfaction with this recount of the history of the site and agreed that no further review of the files would be needed.

Mr. Dunn asked if there are other members of the public who wish to speak to this appeal.

Mr. Brian Bovee, owner of the business building at 1732 Main Street, Pleasant Valley, NY, was present and was sworn in. He stated that he is the current owner of Bovee Construction. He stated that Mr. Rowe has covered a lot of bases and that he will not repeat what has already been said.

Mr. Bovee stated that he came to Pleasant Valley in 1983 and has enjoyed being here ever since. He started his business in Pleasant Valley in 1999 in Charles Street. He pointed out that he has improved the building, put a lot of money into it, and created a nice environment for not only himself but also for the Town. He stated that he believes in what the Town stands for.

Mr. Bovee explained that he is selling his building for a couple of reasons. He stated that he wants to stay in business as a construction company but that with the market's turn his sales have dropped off over the last year and a half. Therefore, he said that he does not need 7200 sq. ft., which is the actual square footage of his building. He stated that he only needs about 3000 sq. ft., and that he wants to continue his business in Pleasant Valley. He stated that he is looking at another building, but that he is not able to do anything until he's able to sell his current building.

Mr. Bovee reviewed the ownership history of his building. In 1956 before Zoning, John De Groodt (spelling?) built the building before any thought had been given to where residential homes would be built. He stated that Mr. De Groodt had 25 employees, construction equipment, trucks, and a construction yard.

Mr. Bovee reviewed the history of his business and stated that he has had up to 11 employees and 3 crews of guys with a full construction cabinet shop. He stated that he still continues to do that today with a warehouse where he continues to do the kitting of projects – that is, storage for all the fixtures, etc. that cannot be stored on the job site. He noted that the warehouse also stores all his equipment, tools, and extra supplies. He stated that he also has a showroom that displays stone, trim, tile, fixtures, cabinets, plumbing, electrical supplies, millwork of all types. He stated that it is a sales floor. He stated that he has a special molder and millwork inside the cabinet shop where he can make up anything that a client needs. He stated that he has offices and a design center, where he has CAD programs and architectural design systems. He stated that when he applied for all the permits for this building he got permission for having offices, showroom, workshop, and warehouse. He stated that it is commercial and that even on the tax register it says warehouse. Mr. Dunn stated that the ZBA has no question or issue with that designation. Mr. Bovee stated that he's trying to establish that, yes, he is in an R-1 zone with a non-conforming use and that all it can be used for is commercial.

Mr. Bovee summarized that the big important things that are being addressed tonight are the traffic flow and keeping within the idea of the hamlet. With relation to the traffic flow, he stated that about 12,000 cars each day. He stated that the percentage cars that would be turning in for a retail center such as a hardware store is 1.6% of total cars that pass by there daily. He pointed out that that is not 1.6% added to the traffic.

Mr. Bovee stated that he and his wife are not only business owners but they also are shoppers. He stated that they go to the A&P, to the pizza place, to 4 Brothers, to the auto parts center. He stated that if he's coming into town to do a few errands, he goes to a number of the shops on any trip and that he will drive to each shop, that he will not walk. He stated that the point he's making is that the town wants to maintain the hamlet character. He referenced the Department of Planning's comment about businesses that are in close proximity tend to thrive next to each other. But he stated that the question to be asked is how close the businesses are to each other. He stated that there is a hot tub guy on one end of town and someone who sells flowers on the other end, but the customers are still passing through. And he stated that everybody still has the opportunity to have a business in the area.

Mr. Bovee stated that he does not think this proposal will increase traffic flow or that it will change it at all or be any kind of detriment.

Mr. Bovee stated that, as far as the hamlet, he's all for that. But he stated that having the hamlet right on Route 44 is not the ideal location for it because it is a major thoroughfare. He stated that coming down from his building, the traffic is still doing 55 mph. Board member noted that it changes to 45 mph well before his building and that the speed limit is 30 mph where he's located.

With regard to environmental impact, Mr. Bovee stated that changing from a construction company to retail would be minimal. He stated that at the height of his business, he had vendors, client, box trucks, his crews, and sales people coming in all day long. He stated that having the construction yard outside as well as all the construction and work going on inside created noise, etc. He stated that the retail center would have a lower impact in the long run, if you look at noise, traffic flow, and its presence. He stated that it will have a cleaner look to it, even considering that he kept his yard extremely clean. He stated that he never wanted it to look like a junk yard, nor did he ever do any construction work or spraying outside or creating any fumes. And he stated that he never did anything late at night. He stated that he always had a high degree of respect for his local neighbors and for the town, that he wanted to keep a great presence there.

Mr. Bovee stated that it is permitted as a construction company and, therefore, another construction company could come in a make a larger presence and an uglier presence. Whereas, he stated that a small retail center – not a Walmart or a chain store with a huge presence – but a small mom and pop shop like a retail center could be a great benefit to the town. He pointed out that, what's happening to the town now if you look at Saw Mill Plaza, how that has been hurting for years. He stated that as he drives around he sees many businesses that are for sale or for rent or lease, the town is hurting. He stated that the real question is not how can we put a dampening spirit on things, but how we can make some changes in the town that will make our businesses thrive. He stated that the small businessman is the backbone of America, and small businesses also are a great tax base that helps the local economy. He stated that when one small business is doing well, it tends to have a domino effect and help other small business in the area. On the flip side, he stated that when one small business falters a little, it tends to bring others down, too.

Mr. Bovee stated that his last concern is the fact that as he tries to sell his building he must consider whether he will sell to construction companies or will it be open for other opportunities. He stated that if the existing building cannot be used for anything else, then he must find the exact person who will buy it as is, which is a hardship on his business.

Ms. Perkins stated that Mr. Bovee does maintain his business very well and that she does not dispute what he has said that the town needs a hardware store. She stated, however, that she had real concerns about access and egress from that location. She stated that exiting from Traver Road is very difficult. She stated that coming down that quick incline, drivers will not be able to take that quick shot out of there. She stated that she has a real concern regarding traffic if he says that he has 8 people coming in and out within an hour, that's a lot of traffic, where a construction business normally would not have that amount of people coming in and out within an hour.

Mr. Bovee asked if Ms. Perkins has been to his office during work hours. Ms. Perkins stated that she has. Mr. Bovee stated that, except for this past year since he's made changes, he has had traffic flow in and out of his business all day long and many different hours from 7 a.m. straight through. He stated that he's had traffic flow of bankers, vendors, sales people, and

clients all day and that he's never had a problem. He stated that, like any other store, when there's traffic there will be a point where drivers must wait to pull out into traffic. He stated that at no time ever did he have to wait more than a couple of seconds to turn either east or west.

Ms. Rubenstein stated that she appreciated what Mr. Bovee is saying and noted that she makes the left turn off of Traver Road going west several times a day and that there are many times that she waits more than 2-3 seconds to make that left. Therefore, she suggested that perhaps there has been an increase in traffic since his business was most active. She pointed out that Mr. Bovee's description of his experience is not what is happening on that corner now.

Mr. Gerstner pointed out the difficulty of exiting from the gas station, as well. Ms. Czech pointed out that she has waited up to 3 minutes to take a left onto Route 44 and is very dangerous with people flying down the hill.

Mr. Bovee pointed out that it is even more problematic in the hamlet itself with CVS and McDonald's. He stated that we are outsizing the town. Ms. Rubenstein stated that he is not convincing her. She stated that, part of the issue is when she pulls out from Traver Road in an area that is marked as 30 mph, the person behind her is going 45-50 mph and was tailgating her. She pointed out that on that stretch of road, the speeds and the traffic are very high there. Ms. Czech pointed out that there is no middle lane to sit and wait for traffic where there is in the middle of town, in the hamlet center where a retail type business normally is located.

Mr. Dunn pointed out that the Pleasant Valley Planning Board, the Fire Advisory Board, and the Dutchess County Department of Planning all advocated a negative decision on this appeal. He suggested that each of those agencies did some research on this proposal, from which they reached their negative conclusions.

Mr. Rowe reiterated the details of his experiment pulling in and out of the driveway every 5 minutes. He stated that there is a quarter mile of sight distance from Mr. Bovee's building compared to the situation at Traver Road coming out onto Route 44. He stated that the biggest problem is turning left out of Traver Road. He noted that drivers are breaking the law exceeding the 30 mph speed limit as they go past Mr. Bovee's building and elsewhere in the Town. He stated that looking west out of Mr. Bovee's building there is great sight distance and that there is no problem making a left hand turn going out of there. He stated that Mr. Bovee's building should not be penalized for people breaking the law. He stated that the speed limit should be better enforced. He stated that he does not think that turning in and out of Mr. Bovee's building is the issue at all. Rather, he stated, it is people breaking the law and speeding. He stated that Traver Road is not a good example to use and was created when the Town was all farms. He noted the increase in the Town population. He referenced the results of a speed trap in Herriman that caught the local residents exceeding the speed limit. He stated that traffic accidents on Route 44 should not have any bearing at all on traffic in and out of Mr. Bovee's building. On Traver Road at school time, he noted, there could be 150 cars coming out of there or more, compared to 8 out of Mr. Bovee's building.

Mr. Rowe expressed how much fun it has been to have a hardware store in town and how much he appreciates that the Town has been welcoming to him and his business and has given him an opportunity to grow. He stated that the reason he's before the Planning Board

is because the Town's people have given him an opportunity to grow. He noted that there's a great opportunity for other businesses to, also, grow and to provide great service for the Town.

Board member asked how many square feet Mr. Rowe currently has. Mr. Rowe stated that he has about 4,000 sq. ft. Board member asked if Mr. Rowe has considered the property next door to him. Mr. Rowe stated that he would have the same problems with not being able to expand and the water problems on that site. He stated that he could not have a dry goods store and could not have storage, for instance, for barbeque grills. He noted that it is in the same shopping center and has the same problems and stated that even if he were to have both locations it still does not solve his problems.

Public hearing closed.

2. APPEAL #903 GORDINEER – VARIANCE

Mr. Dunn stated that this appeal is for a variance from the minimum side setback relating to the height of the proposed addition to a home on the parcel. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 9/20/07
- Referral from Planning Board: positive recommendation
- Fire Advisory Board comment form: no position on this application as there are no fire or safety concerns and is strictly a matter for the ZBA
- List of adjacent property owners who were notified of this hearing

Ms. Alicia Ali Gordineer, 41 Clark Heights, Pleasant Valley, NY, was sworn in. She stated that they want to put an addition on their house, that they have lived in the house for 7 years, and that they have been in Pleasant Valley for 13 years. She stated that they have 2 small children now and that their house is 1100-1200 sq. ft and that they are bursting out of it. She stated that they are talking about having another child, but that they are already 4 people in 2 bedrooms. She stated that they would like to add on some more living space. She stated that the addition will be in the back of the house and that it will be a little bit lower than the height of the existing building. She stated that it will be 2 stories – ground level the basement and then the living level.

Ms. Rubenstein asked for confirmation that the addition will not be taller than the existing building. Board confirmed this as accurate. Ms. Rubenstein noted that it will still be 15' away from the side. Mr. Vogt reviewed the dimensions. Board explained the setback requirements to Ms. Gordineer and the rationale for these requirements. Mr. Vogt noted that there was no lot line marker on site and, therefore, could not do his usual measurements, and asked her to put in a marker.

Board members and Mr. Friedrichson worked out the dimensions of the addition and the required variance.

Mr. Dunn asked if there was anyone from the public who would like to speak to this appeal. No one spoke.

Public hearing closed.

3. APPEAL #904 DARIA – VARIANCE

Mr. Dunn noted that this appeal is for a variance from minimum side setback for existing deck on home, as deck will be 9'8" from the lot line to be established by proposed subdivision of the parcel. He stated that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 9/20/07
- Referral from the Dutchess County Department of Planning and Development: declining any response and stating that it is a matter of local concern
- Referral from Planning Board: negative recommendation – lot line can be relocated in order to provide the required setback
- Fire Advisory Board comment form: no position on this application as there are no fire or safety concerns and is strictly a matter for the ZBA
- List of adjacent property owners who were notified of this hearing

Mr. Michael Dalbo, land surveyor, 10 Crum Elbow Road, Hyde Park, NY, was sworn in. He stated that they submitted a map to the Board that shows what the applicant would like to do at this property. He stated that the reason they are before the Board is that the deck does exist. In response to the recommendation from the Planning Board, he stated that he is curious as to how they would like the lot line to be located in order to meet the required setbacks. He stated that it would be helpful to have that information.

Board members discussed options for relocating the lot line to accommodate the required setbacks. Mr. Vogt pointed out how the line could be drawn given that they have 25 acres to work with, so that it would be less than a 1/10 of an acre change. Board members also noted that nothing has been done yet to create these lots.

Mr. Dalbo asked if the staircase also requires that setback. Board members responded that it does.

Board members reviewed the impact of moving the lot line. Ms. Rubenstein pointed out the drawbacks of doing so and that it may not be any more practical to move the lot line. Mr. Vogt pointed out the rationale that the applicant has the acreage to accommodate moving the line and, therefore, would not need a variance at all.

Mr. Dalbo stated his opinion that the lines as represented on the map would be much better for each individual home, simply because the lot lines would be straight. He stated that he would not want somebody barbequing in his backyard. He stated his opinion that the current layout makes much more sense.

Ms. Rubenstein pointed out that the current location of the staircase creates a 0' setback and asked if it can be redesigned to bring it closer to the house.

Mr. Anthony Daria, owner, 3353 Route 342, Amenia, NY was sworn in. He agreed that the Board brought up a good point about the steps and that he's imaging himself as a neighbor and living in that vicinity. He stated that he thinks it's fine there. Ms. Rubenstein explained that the ZBA has never granted a 0' variance. She stated that no one knows what will happen in the future, that neighbors could hate each other, and there would not be an inch of separation between the stairways and the lot line. She suggested that he relocate the stairs so that they are not completely up to the property line. Board members discussed redesign options and explained that the ZBA could grant a variance conditional upon that redesign.

Mr. Gerstner asked how old the deck is. Mr. Daria estimated that it is 40 years old. Mr. Gerstner suggested that the new owners of that lot will want to replace the deck. Mr. Daria suggested that they will want to replace the decking but not the structure. Mr. Gerstner suggested that if the deck were replaced, possibly with a smaller deck, the staircase could also be redesigned, in which case no variance could be required.

Ms. Rubenstein pointed out that if the applicant is granted the variance that he has applied for, he will then have to move the stairs. Mr. Gerstner pointed out that the application, as it stands, is incorrect because it is not a 9'8" variance but rather is 15'. Ms. Rubenstein reasoned that if the applicant were to be granted the 5'4" variance, the applicant would also understand that the stairs must conform to the 5'4" variance. Ms. Rubenstein asked Mr. Daria if he understands that requirement. Mr. Daria responded that he does understand that. Ms. Rubenstein summarized that the applicant can withdraw the application and reconfigure the lot lines per the Planning Board's suggestion or the applicant can let the ZBA vote on the 5'4" variance.

Mr. Daria asked whether they would still need the variance for the deck itself if the staircase were relocated. Board members responded, yes, that for the plan as it currently is submitted he would need the 5'4" variance.

Ms. Rubenstein asked Mr. Daria if he wanted to withdraw his application. Mr. Daria consulted with Mr. Dalbo and decided not to withdraw the application. Mr. Daria stated that he will take the stairs off or relocate them.

Mr. Dunn opened the Public Hearing and invited the public to speak. No one spoke. Mr. Dunn closed the Public Hearing.

4. APPEAL #905 KUKLIS (VINYL TECH) – VARIANCE

Mr. Dunn stated that this is an appeal for a variance from the minimum center of road setback requirement for a 3-season room addition to a home on the parcel. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 9/20/07
- Referral from Planning Board: positive recommendation
- Fire Advisory Board comment form: no position on this application as there are no fire or safety concerns and is strictly a matter for the ZBA
- List of adjacent property owners who were notified of this hearing
- Referral from the Dutchess County Department of Planning and Development: no comment as it is a matter of local concern

Mr. Jonathan Field, Vinyl Tech, 668 Dutchess Turnpike, Poughkeepsie, NY was sworn in.

Ms. Donna Kuklis, 96 South Avenue, Pleasant Valley, NY, stated on the record that she authorizes Mr. Field to speak for her on this application.

Mr. Field stated that there is currently a cement patio outside the house on the right hand side. He stated that the house is non-conforming and that they will not be increasing the non-conformity by putting in the sunroom where the patio is now. He stated that they will remove the old patio and build a sunroom that is smaller than the existing patio. He noted that it cannot be located in the backyard because of the way the house sits. He noted that the

deck on the back is 2+' to the neighbor's property. He stated that this is the only location for the sunroom.

Mr. Gerstner asked the age of the house. Ms. Kuklis stated that the house was erected in 1876.

Mr. Maucher asked if the sunroom would be attached to the side of the house. Mr. Field stated that it will be attached. Mr. Maucher asked about an entry way that juts out. Mr. Field explained how the sunroom will be constructed in that area.

Mr. Dunn opened the Public Hearing and invited the public to speak. No one spoke. Mr. Dunn closed the Public Hearing.

5. APPEAL #906 SWANSON (OUT ON A LIMB TREE SERVICE) – SPECIAL USE PERMIT

Mr. Dunn stated that this appeal is for a Special Use Permit to change from a pre-existing non-conforming use (part of an autobody repair business) to tree service business, construct barn-style building to house office and related equipment and materials storage and associated improvements to the site. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 9/20/07
- Referral from Planning Board: positive recommendation
- Fire Advisory Board comment form: no position on this application as there are no fire or safety concerns and is strictly a matter for the ZBA
- List of adjacent property owners who were notified of this hearing
- Referral from the Dutchess County Department of Planning and Development: no comment as it is a matter of local concern

Mr. Matt Swanson, 16 Amanda's Way, LaGrangeville, NY was sworn in. Mr. Swanson stated that currently he is operating out of Morehead garage across the street from the Town Hall. He stated that he has been doing business in town for 8-9 years. He stated that he is renting from Mr. Morehead and that he has outgrown that location. He stated that he proposes to clean up Mrs. Fields' land that has been used for auto storage and to build a nice looking shop, keep everything in the back out of sight, and do business as he has been doing.

Mr. Dunn asked about what will happen with all the cars that are currently on the site. Mr. Swanson stated that, per his contract, Mrs. Fields has to remove all the stored cars that have been there over the years. He stated that he is working with her to do that now and that it is going pretty well. He stated that they have gotten the majority of the stuff out already.

The Board reviewed the photos that Mr. Swanson submitted, and he clarified which lot (1.8 acres) he is purchasing. Mr. Vogt asked for clarification of whether the existing autobody shop is going away. Mr. Swanson stated that Mrs. Fields is trying to sell it but that he is not purchasing that lot and is not purchasing that building. Ms. Rubenstein asked for clarification on what is on the lot now. Mr. Swanson stated that Mrs. Fields has been using the lot and the building as one but explained that they are separate lots with separate deeds. Mr. Swanson stated that they are separate parcels and explained that the parcel he will purchase is where she has stored the cars over the years. Mr. Swanson pointed out on the maps these parcels and the one that he is proposing to purchase.

Ms. Rubenstein asked about Mr. Swanson's business. He stated that he owns a tree service business. Ms. Rubenstein asked if customers come to him. Mr. Swanson responded no. Ms. Rubenstein asked Mr. Swanson to explain what activities transpire on his property. Mr. Swanson stated that he does all his work off site, that he would store his vehicles and equipment on the property. He stated that throughout the year he has from 4-9 employees. He stated that he currently has a home office but that someday in the future he would like to have an office on this property. Ms. Rubenstein asked if he will have an office on this site. Mr. Swanson stated that he is proposing an office on that site. He explained that his employees come to the site, pick up whatever equipment they need, and then they leave. Mr. Gerstner asked if he would bring the wood back to this site. Mr. Swanson stated that he has separate lots where he brings the wood, and that he does not sell wood but rather he gives it away. He stated that there is no way to make money on firewood and that he does not intend on doing it. He stated that he's heard the rumors but that he is not storing logs or selling logs.

Mr. Swanson stated that depending on his budget he is planning on constructing a 50' x 80' building where he can store all his equipment, put up a privacy fence around the outside for security purposes, and do some landscaping out front. He stated that there will be some plantings and some trees and that he wants to make it look very nice. He stated that he wants to clean the place up and clear out the front overgrown hedgerow and take down the old fence and redo everything.

Mr. Gerstner pointed out that, although the application states that he is changing from one non-conforming use to another, he is actually creating a new commercial business in an R-1 zone. Mr. Swanson stated that Mrs. Fields was using the lot for storage. Ms. Czech stated that it was separate lots but that it was used as part of the autobody business with storage on that site. Mr. Swanson stated that he's only going to improve the place and that he definitely will not be an eyesore. Mr. Vogt stated that it has been used as a non-conforming storage lot for vehicles. Ms. Rubenstein stated that it has been accessory to the auto shop. Mr. Vogt pointed out that the fire department has used the land to practice extrications and technically it's been a junk yard. Mr. Swanson agreed. Ms. Rubenstein also agreed and stated that that was clearly a non-conforming use as a junk yard and for storage and that it pre-dated zoning. Board members agreed that it is not a factual issue and that no further information is needed.

Ms. Rubenstein asked if all the vehicles will be stored inside the building Mr. Swanson is proposing to construct. Mr. Swanson stated, if he can afford it, he will store the vehicles and equipment that he owns in the building. He stated that he wants all of his equipment stored inside.

Mr. Rubenstein asked if there is any gasoline or other environmental pollution or contamination on that site as a result of years of automobile storage. Mr. Swanson stated that if he is granted the Special Use Permit his next steps are to meet with Brian Frank, surveyor, to get a survey and to meet with an environmental company for an environmental impact assessment on the land.

Board discussed traffic impact from the site and agreed that it would be minimal.

Mr. Dunn opened the Public Hearing and invited the public to speak.

Ms. Linda Herriman, Pine Hill Road, Pleasant Valley, NY was sworn in. Ms. Herriman pointed out her properties on the map. She stated that her backyard abuts Mrs. Fields' property. She stated that her main concern is that she does not want to look at a big building with vehicles and trucks parked there. She stated that from her back yard she looks into Fields' property. Ms. Rubenstein asked if she sees the junked cars. Ms. Herriman stated that she sees everything from her back porch and that she sees the cars. Ms. Rubenstein asked if it would be an improvement if the junk cars were not there. Mr. Herriman stated that it would be an improvement if the cars were not there, but nobody is ever on that site and that it is a big wooded section. She stated that if the wooded section were removed and a building were erected, it would not be an improvement. She asked, if there are trucks going in and out, how fair that is right next to a grandfathered residential house. Ms. Rubenstein noted that the Planning Board does not normally allow someone to tear everything down and put a big building up and asked, if the tree line were preserved to protect her, would Ms. Herriman think that it is an improvement to have the junk cars gone. Ms. Herriman stated that that is enormous, that she can look over a car that's parked there but that she cannot possibly look over a building.

Ms. Rubenstein explained that if the ZBA approves the Special Use Permit, the type of structure that is constructed and the distance from property lines and landscaping and trees – all those details are the responsibility of the Planning Board. Ms. Herriman stated that it would be one more big office building that is going up on Route 44. Mr. Vogt noted that a flat bed truck drops cars in and out of there all the time. Ms. Herriman stated that it's a grandfathered business and that this is a new business.

Ms. Rubenstein explained that the ZBA's task is to decide whether it would be appropriate to have this proposed non-conforming use take the place of the one that is already there, which is the storage of the junk vehicles. She explained that the question of whether there are trees remaining on the lot is a Planning Board issue. Further, she suggested that if the ZBA grants this appeal, perhaps Mr. Swanson would be happy to have a conversation with Ms. Herriman about her concerns.

Mr. Swanson stated that they are not taking any trees down, that they are not touching Ms. Herriman's property line, and that he would be willing to work with her and plant some trees.

Mr. Dunn invited others from the public to speak to this application. No one spoke.

Public Hearing closed.

6. APPEAL #907 BERGER - VARIANCE

Mr. Dunn reported that this appeal is for a variance from minimum center of the road setback requirement for location and construction of a storage shed on the property. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 9/20/07
- Referral from Planning Board: negative recommendation – applicant has alternative locations that would provide the required setback
- Fire Advisory Board comment form: no position on this application as there are no fire or safety concerns and is strictly a matter for the ZBA
- List of adjacent property owners who were notified of this hearing

- Referral from the Dutchess County Department of Planning and Development: no comment as it is a matter of local concern

Mr. Richard Berger, 1153 Salt Point Turnpike, Pleasant Valley, NY was sworn in. Mr. Berger corrected the record by stating that it is not a shed, but is a 2-car garage – 24' x 24'. He stated that the theory behind putting it where it is, is that it would make use of the existing driveway and it would require minimal excavation. He noted that it is very flat there and it would be convenient for moving cars in and out. He stated that to move it back to where he believes the Planning Board would like it to be would involve a large amount of excavation and fill to raise it to the level of his existing home. He stated that it would also require a significant change to the black top of his driveway. He stated that it will be wood construction with vinyl siding. He stated that he thinks it will be adding to the aesthetics of his property and explained that he cares a great deal for the appearance of this home. He stated that it's a matter of his budget and the logistics of the property. He stated that it would make his house very long and that he would be cutting off his access to his backyard from that side of his house.

Ms. Rubenstein asked if Mr. Berger will use the existing driveway. Mr. Berger pointed out on the map his existing driveway and stated that the driveway would be placed closer to the garage and that part of the driveway would be removed. Mr. Berger acknowledged that the submitted map is inadequate to display his proposed project.

Mr. Maucher asked how tall the structure would be. Mr. Berger estimated that the door will be 10' high and that he does not know how tall the proposed building will be. Ms. Rubenstein asked if it will be more than 36' tall. Mr. Berger assured her that it would not be that tall.

Mr. Vogt reviewed the required setback and asked why he would want to put the shed up front. He expressed the opinion that the more logical location is at the end of the house right off the garage. And now that he knows the planned structure is a garage and not a shed, he stated that because of sight issues he is encroaching upon visibility to the roadway of Salt Point Turnpike. Mr. Berger stated that the line of sight does not break his tree line. Mr. Vogt stated that it does not matter because he is proposing to break into the right-of-way in front of his home.

Ms. Czech asked how far the house is from the center of the road. Mr. Berger stated that his house does not meet the required 80' setback. He stated that it becomes a matter of economics. Mr. Vogt expressed his understanding for that concern and noted that Mr. Berger is requesting a severe variance and that he has other options.

Mr. Berger assured the Board that he has no problems pulling out of his driveway. Mr. Vogt explained that the Board's concern is not only for him, as the current owner, but is also for all future owners of that property. He explained that the sight issue continues with the property. Ms. Czech agreed that Mr. Berger could move the garage back from where he is currently proposing to locate it. Mr. Vogt stated that if he stayed within the same plane as the house there would be less of a problem because he would not be encroaching any further.

Mr. Dunn explained that the ZBA's charge is to maintain things as close to Zoning as is possible. He explained that, if Mr. Berger needed a 12' variance as opposed to a 40' variance, it would be a lot easier for the Board to approve.

Ms. Rubenstein asked about the excavation problem. Mr. Berger stated that it is virtually flat where he is proposing to locate the garage. He pointed out where his property slopes off and explained the excavation needed to grade and level off his property. Ms. Rubenstein asked if he knows the estimated cost for that work. Mr. Berger stated that he does not know what it might cost. Ms. Rubenstein explained that if it were egregiously expensive, the Board would take that into consideration. Mr. Berger stated that he has not gotten that far in his planning for this project.

Mr. Dunn explained that although Mr. Berger's house pre-dates zoning, the proposed garage is subject to the Zoning code. Mr. Berger stated that he understands this and acknowledged that he is asking for a significant variance.

Mr. Dunn opened the Public Hearing and invited members of the public to speak. No one spoke.

Public Hearing closed.

DISCUSSION

1. APPEAL #896 ROWE – SPECIAL USE PERMIT

Ms. Rubenstein noted that the section of the Code that pertains to this appeal states that "a non-conforming use may be changed to another non-conforming use by special permit upon proper application upon determination by the ZBA that the proposed use will be no more detrimental to its neighborhood and surroundings than the use it is to replace." She stated that she went through the Schedule of Uses and was curious to see what is permitted by Special Use Permit in that zone. She stated that, if this came to the ZBA as a brand new application for a Special Use Permit, the Code does not permit a retail store in that zone. Therefore, she stated that it would not be in front of the ZBA and the Board would not be considering it. Mr. Friedrichson noted that, under those circumstances, it would not come to the ZBA as a Special Use Permit but, rather, as a Use Variance application. Ms. Rubenstein agreed with this statement and noted that the ZBA would never grant such an application because there would be no possible way to prove what must be proved in order to grant the Use Variance.

Ms. Rubenstein concluded that if this application came to the ZBA fresh, that there was no prior non-conforming use, the Board would never ever grant it. She noted that it would be almost like rezoning that property for something completely different. She stated that the current non-conforming use is pretty much the same – it has always been the owner's company location. She stated that it is a very substantial zoning change to change to retail on that site. She stated that she considers that to be a very significant burden in terms of legal issue, the Zoning Code issue and the Zoning and Planning issue. She stated that that is the first consideration that she thinks about with regard to this application.

Ms. Rubenstein noted that Mr. Rowe spoke at some length about how the Board would be causing a great loss because Mr. Bovee would not be able to use the building. She stated that that building has always been used as a construction office and when he purchased that building there was no expectation that there was any commercial use that would become available. She stated that it was always very strictly non-conforming use; and that, originally when the Zoning Code was adopted, the thought or expectation was that these non-conforming uses would eventually die out. She stated that when Zoning Codes were first introduced the theory was to let people continue the businesses that they had but they were never going to get any more in depth as commercial business in a residential zone, and eventually they would die out. She noted that that is not what has happened; rather, they have perpetuated. But, she stated that the ZBA is supposed to do what it can and not expand these non-conforming uses. Therefore, given that legal and zoning background, she stated that this is a significant burden.

Ms. Rubenstein also pointed out that the Town Planning Board opposed it and that the Dutchess County Department of Planning and Development has recommended against it. Mr. Dunn pointed out that the Fire Advisory Board has also recommended against it. Ms. Rubenstein emphasized that the professional planners in the County have looked at this project and said that this is not a good idea from a planning point of view. She noted that the Board members have spent time talking about traffic, but stated that the ZBA does not have the authority to rezone property. She stated that if it came to the Town Board as an application to rezone, the Board would not grant it. Therefore, she stated that she does not think the ZBA should.

Mr. Maucher clarified that the non-conforming use when owned by DeGrout was continued when it was purchased by Mr. Bovee – it was a continuing non-conforming use of that property. But now, he noted, the applicant wants to change it significantly from that previous business to a retail business. Board members agreed that the change is significant. Ms. Czech noted that retail is not one of the uses permitted for R-1. Ms. Rubenstein stated that retail is permitted in C-1 and C-2. Mr. Vogt stated that there are no other areas where retail is permitted, except in C-1 and C-2. Ms. Czech suggested that granting this application would be akin to spot zoning because it is not the same use that exists at this point in time.

Board discussed what category under the Zoning Code a construction business would fall into. Mr. Friedrichson stated that construction itself is not conducted on that site, that a construction business usually entails storage of vehicles which is definitely not something that the Town wants in a residential zone. Board discussed other commercial buildings in other commercial zones and determined that there are no other comparable situations in the Town.

Ms. Rubenstein stated that she's looking at this as a very significant zoning change and that it does not seem to be as simple as one non-conforming use to another.

Ms. Czech referenced the portion of the Code that refers to the relative detriment to the neighborhood. Mr. Friedrichson recommended a portion of the Code where it specifically mentioned the elements required for a Special Use Permit. Ms. Czech read from another portion of the Code that specifically details the items that the ZBA must take into consideration when determining relative detriment:

- Traffic generated

- Nuisance characteristics such as emission of noise, dust, and smoke
- Fire hazards
- Hours and manner of operations

Ms. Rubenstein expressed the concern for the consequences of permitting the hardware store to move to that location, the possibility that it may fail, and the result being that the Town has created a retail non-conforming use there. Mr. Vogt noted, therefore, that another retail business could walk in without any impediment. Ms. Czech agreed with this concern and stated that that is not a retail area.

Ms. Czech stated that she agrees with the Planning Board regarding moving a retail business out of the center of the hamlet, thus creating sprawl and the potential for a scattering of retail stores within a residential area. She stated that she agrees with the Planning Board and does not think it is the best idea to remove the store from the hamlet center.

Mr. Maucher stated that he would not argue either in favor or against the application at this point. He stated that he thinks the applicant made a good point that if he feels the needs of his business are such that he cannot stay at his present location – it's not big enough or whatever – he has a problem that the hamlet is not addressing. Mr. Maucher stated that that is a point that sticks out for him. Ms. Perkins stated that she can think of other properties that would be beneficial. Ms. Czech stated that that is not the only property that is available and that there may be properties available with the correct zoning.

Mr. Gerstner noted that the applicant makes a valid point that all business needs to be here and that he has every right to expand his business and the Town does not want to lose a hardware store. He stated, however, that he agrees that this location does not seem to be the right location and a different one may be much better.

Ms. Czech stated that County Planning and the Comprehensive Plan Committee, as well, are looking at the "walk-ability" of the Town – to make it more walkable, to have a hamlet center that people come to and they park once and they walk. She stated that having a business outside of that hamlet center does not promote anything remotely like that and does generate more traffic because people have to drive to point to point to point. She stated that it does not help the direction the Town is leaning towards. Ms. Rubenstein underscored this concern and stated that we drive now where we should be walking and noted that we will not be able to continue to do that. She stated that the more the Town creates the community so that people must keep driving, the worse global warming gets. She stated that downtown was not created with the walking person in mind, but that that does not mean it is always going to be that way. Mr. Maucher stated that originally when the Town was established few people had cars. Board discussed the concept of creating a Town center and keeping the businesses in the hamlet.

Mr. Maucher noted that County Planning recommended against this application. Mr. Vogt mentioned, therefore, the requirement of a supermajority vote (5 out of 7) of the Board in favor of the application in order to grant the permit. He also pointed out that the Board would still have to provide a written explanation to the County Planning Department of the Board's rationale for granting the permit. Mr. Dunn stated that the law requires the supermajority and the written rationale.

Board members agreed to draft a written resolution prior to taking a vote. Ms. Rubenstein offered to work on the resolution and stated that she will not be at the next meeting. She stated that she will e-mail the draft resolution to the Board members.

Mr. Dunn notified the applicant that the Board will not render a decision on this tonight. He explained that the Board is trying to come up with reasons to grant the appeal but that they can't. He explained that it will be done as a formal resolution and explained that from the time the Board closed the Public Hearing, which was tonight, it has 60 days to render a decision.

2. APPEAL #903 GORDINEER – VARIANCE

Ms. Rubenstein stated that all worksheets should be attached to the minutes.

Board members stated that they have no problems with this application.

Ms. Perkins read the worksheet (original attached) into the record. The requested variance is 6' on the left setback. The benefit to the applicant outweighs the potential detriment to the neighborhood.

Ms. Perkins: **MOTION TO GRANT THE VARIANCE**

SECONDED BY L. RUBENSTEIN

VOTE TAKEN AND APPROVED 7-0-0

3. APPEAL #904 DARIA – VARIANCE

Ms. Czech read the worksheet (original attached) into the record. The requested variance is 5'4" on the side setback.

Mr. Vogt asserted that a feasible alternative is to adjust the lot lines so that no variance would be required. Some Board members agreed with Mr. Vogt's statement, others did not. Therefore, there was no consensus on whether there is a feasible alternative. The benefit to the applicant outweighs the potential detriment to the neighborhood.

Board discussed how to document, as a condition of granting the variance, the removal of the stairs.

Ms. Rubenstein: **RESOLUTION TO GRANT THE VARIANCE**

Based upon the Board's discussion of the variance application and taking into consideration the benefit to the applicant as weighed against the detriment to the health, safety, and welfare of the neighborhood, the Zoning Board determines that the benefit to the applicant is greater and that the Board grants the variance with the condition that the applicant either remove or relocate the stairs on the right side of the property to conform to the 5'4" setback.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 4-3-0

4. APPEAL #905 KUKLIS (VINYL TECH) – VARIANCE

Ms. Czech read the worksheet (original attached) into the record. The requested variance is 25'6" on the front setback. The benefit to the applicant is greater than the potential detriment to the neighborhood.

Ms. Czech: **MOTION TO GRANT THE VARIANCE**

SECONDED BY L. RUBENSTEIN

Discussion: Mr. Vogt pointed out that the proposed addition is about 13' further back from the front of the house. Therefore, it does not encroach any closer to the street than is the existing structure and is not going to change the existing condition.

Ms. Czech added a note to the worksheet to document that the proposed structure is further back from the front of the house, and therefore, does not encroach any closer to the street than the existing structure and is not going to change the existing condition.

VOTE TAKEN AND APPROVED 7-0-0

5. APPEAL #906 SWANSON (OUT ON A LIMB TREE SERVICE) – SPECIAL USE PERMIT

Discussion and decision postponed to a future ZBA meeting.

6. APPEAL #907 BERGER – VARIANCE

Ms. Perkins read the worksheet (original attached) into the record. The requested variance is 44' on the front. The worksheet documents that other feasible alternatives exist, namely that the applicant could move the garage further back on his property. The worksheet documents that the requested variance is substantial. Further, the worksheet documents that the proposed garage impacts the physical conditions existing on the property by limiting sight distance on the Turnpike. The detriment to the health, safety, and welfare of the neighborhood is greater than the benefit to the applicant.

Ms. Perkins: **MOTION TO DENY THE VARIANCE**

SECONDED T. GERSTNER

Discussion: Ms. Rubenstein asked for clarification of the impact on line of sight. Ms. Perkins clarified that the proposed structure will impact the line of sight for neighbors pulling out of their driveways. Ms. Rubenstein asked if the neighbors are that close or if it is with regard to the setback of where the other houses are at.

Mr. Vogt stated that with the proposed location of the structure, there is only 20' to the edge of the roadway. He stated that there is a curve in the area, that it is not a total straight away. He stated that someone coming out onto the Turnpike would not be able to see until they are at the edge of the road. He noted that there was a similar circumstance with the property on Route 44.

Mr. Maucher stated that the applicant has alternatives, that he can move it back and, therefore, would not need as much of a variance. Ms. Rubenstein mentioned the applicant's

desire to locate the garage so that his wife's garden would not be impacted. Mr. Gerstner noted that if he moves it back, he still has 40'. Ms. Czech agreed that, more than a line of sight issue, the bigger issue is that the applicant could move the garage back.

Ms. Rubenstein asked if the worksheet reflects the alternative that the applicant can move the garage further back. Ms. Perkins stated that the worksheet does reflect this alternative.

VOTE TAKEN AND APPROVED 7-0-0

Ms. Rubenstein stated that it will be important for Ms. Salvato to explain to the applicant the Board's rationale for denying the variance.

7. MINUTES

Ms. Rubenstein: **MOTION TO APPROVE THE MINUTES OF THE 8/23/07 ZBA MEETING; SECONDED BY J. DUNN; VOTE TAKEN AND APPROVED 6-0-0**

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

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the September 27, 2007, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

October 25, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on October 25, 2007, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:35 p.m.

Members present: John Dunn, Chair
 Christina Perkins
 Ronald Vogt
 Tim Gerstner
 Helene Czech
 Ed Feldweg, Alternate
 Bob Maucher

Members absent: Lisa Rubenstein

Also present: Dieter Friedrichson, Zoning Administrator

1. **APPEAL #908 TEBOLT/DONALDSON – VARIANCE**

Mr. Dunn reported that this is an appeal for a variance from minimum side setback for proposed construction and location of a storage shed on the parcel. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 10/19/07
- Fire Advisory Board comment form: no comment as there are no fire or safety issues
- Recommendation from the Planning Board: negative recommendation as the Board feels that the property is large enough to accommodate location of the shed in compliance with minimum setback requirements.
- List of adjacent property owners who have been notified of this hearing.

Ms. Tracey Donaldson, 24 Birch Drive, Pleasant Valley, NY was sworn in. She stated that the place where they want to put their shed is the flattest and most level piece of land where they would have to remove the least number of trees. She stated that their lot is heavily wooded. She stated that their house is about 40' from the property line and was built in 1967. She stated that the shed would be behind the house where it would not be seen. She stated that she understands that it needs to be 15' from the boundary, but it would then be in the middle of their backyard if they did that. She stated that she staked and roped everything off. She stated that even though it is a one acre lot, that is where they work and split their wood. She stated that that is why they wanted to put the shed in that location – that is where the wood piles are and where their wheelbarrows are hidden behind the house. She stated that right now everything is covered by tarps and looks terrible, so they want to put the shed up. She stated that the 8' x 10' shed is not permanent. She noted that she took it apart in the store. Mr. Dunn stated that a shed is considered permanent. Ms. Donaldson noted that if they move, they can dismantle the shed and take it with them.

Mr. Dunn noted that Ms. Donaldson is asking for a 13' variance which means that the shed will be only 2' from the lot line. He stated that if the ZBA grants a variance of X feet, that's where the shed must be placed. Ms. Donaldson emphasized that she did the measurements,

that she did not have a surveyor come and take the measurements. She stated that she found the property markers in the ground and measured from there. Mr. Dunn stated that it seemed to him from the stakes that the shed was more like 5' from the property line.

Mr. Feldweg asked how Ms. Donaldson located the property line. Ms. Donaldson stated that she found the survey stakes in the ground and that she tied string from one stake to the other stake. Mr. Vogt noted that he saw the twine there when he visited the property, but that he did not know if Ms. Donaldson had put the stakes in. Ms. Donaldson stated that the stakes in the ground were there and that she does not know who put them in, but that they were not done by her.

Mr. Dunn stated, again, that it seemed to him that it was closer to 5' from the property line. Mr. Vogt stated that he did not have his tape measure with him when he visited. He explained that the ZBA is tasked with granting the least amount of encroachment, the least invasive variance. Therefore, he asked if it is possible to move the shed to 5' off the property line, which would then only require a 10' variance. Ms. Donaldson stated that she can move the shed as requested, that she can locate the shed 5' off the property line. Mr. Feldweg stated that the ZBA could deny the 13' variance and grant a 10' variance.

Mr. Feldweg asked if Ms. Donaldson has talked to her neighbors about this. Ms. Donaldson stated that the person who owns the adjacent land has moved and that the lot is vacant.

Public Hearing Opened: Mr. Dunn asked if there is anyone from the public who would like to speak to this appeal. No one spoke.

Public Hearing Closed.

Discussion:

Mr. Feldweg stated that he has no problem with a 10' variance but that he has serious concerns with any appeal for a variance that would place a structure less than 5' from a property line. He stated that that he understands the reason for the application and agreed that it would destroy their yard to bring the shed in another 10'. He stated that he thinks this is a situation where the advantage to the applicant certainly outweighs the detriment to the community, neighbors, et al.

Mr. Dunn noted that Ms. Donaldson has a 1 acre lot in an R-5 zone. Ms. Donaldson stated that this was before zoning and that they bought the ½ acre next door to prevent building on it.

Ms. Czech read into the record the Decision and Notice of Action of the ZBA Area Variance (original on file). The requested variance is 13' right side setback for construction of an 8' x 10' shed. The Code Section is 98-12.

Ms. Czech: **MOTION TO GRANT THE VARIANCE AS MODIFIED WITH THE FOLLOWING CONDITION:**

- 1. the shed must be moved to a minimum of 5' from the property line, thus creating a 10' variance.**

SECONDED BY C. PERKINS

VOTE TAKEN AND APPROVED 6-0-0

Mr. Dunn advised Ms. Donaldson that the approval is for a minimum of 5' from the property line and if she can get more distance, it would be appreciated.

2. MINUTES

Mr. Dunn: **MOTION TO APPROVE AS AMENDED MINUTES OF SEPTEMBER 2007 ZBA MEETING; SECONDED BY C. PERKINS; VOTE TAKEN AND APPROVED 5-0-0**

3. APPEAL #896 ROWE – SPECIAL USE PERMIT

Mr. Dunn noted that the public portion of the hearing was closed at the last ZBA hearing, and he then opened the Discussion on this appeal.

Board members read through the draft Resolution to Deny this appeal and made corrections to the document. Ms. Dickerson, Board secretary, agreed to make the corrections and e-mail the corrected resolution to Ms. Salvato.

Ms. Perkins read the corrected Resolution to Deny into the record.

Mr. Feldweg: **MOTION TO DENY THE APPEAL; SECONDED BY H. CZECH; VOTE TAKEN AND APPROVED 6-0-0**

Ms. Czech read into the record the Decision and Notice of Action of the Zoning Board of Appeals Special Use Permit based on the Resolution to Deny.

4. APPEAL #906 SWANSON (OUT ON A LIMB TREE SERVICE) – SPECIAL USE PERMIT

Mr. Dunn noted that the public hearing was closed on this appeal at last month's ZBA meeting.

Discussion: Mr. Vogt stated that this is appeal is a little different in that there are 3 parcels pertaining to this business operation. He pointed out that they are talking of taking one portion of this property from one non-conformity to another, meaning the storage of automobiles in various states of dismantling or automotive repair and storage of non-usable vehicles – taking them off the property and changing it to storage inside of a building of similar equipment. But, he noted, that it is to operate a business but not for retail use in any way, shape, or form, but just for storage of equipment to be used off site for the business. He stated that this business is to take care of trees on somebody else's property, and that they take the equipment to the customers.

Ms. Czech noted that the non-conforming use of one of the 3 parcels is being changed and asked what happens to the other 2 parcels when they sell. Mr. Vogt stated that they would have to come before the ZBA if they want to change. Ms. Czech pointed out that in that case there would be 2. Mr. Vogt stated that they still have the use that is there right now. He stated that this is a portion of a property that was used as a non-conformity.

Ms. Perkins stated that she feels that the character of the neighborhood and surrounding property values would be reasonably safeguarded because the proposed use would be less detrimental than the existing use. Further, she noted that the proposed use of the property will not cause undue traffic congestion or create a traffic hazard because the location will be used as a storage location for company vehicles and not as a store front or business.

Mr. Feldweg asked for clarification on which of the three parcels pertains to this appeal. Board reviewed the map and pointed out the lot. Mr. Feldweg suggested that because the lot has been used for storage of cars there would have been no traffic at all on that site. Ms. Perkins pointed out that there have been flatbeds in and out all the time and wreckers and that there was considerable turnover of vehicles by Friendly Honda. Mr. Vogt stated that they used the storage for vehicles for automotive repair for the body shop and that Honda used the lot because they had overflowed their space.

Mr. Vogt also pointed out that the proposed use of the parcel will be better for the environment. He noted that the stored cars on this site have been out in the rain where transmission oil, break fluid, and other toxins may have leached into the ground. But now this situation would be improved with just a few vehicles that are in good running condition being stored inside of a building. Ms. Czech agreed that they won't be junk cars. Mr. Feldweg agreed and stated that he has no problem with this appeal, that anything would be better than storage of junk cars.

Ms. Czech read into the record the Decision and Notice of Action of the Zoning Board of Appeals Special Use Permit (original on file).

Ms. Perkins: **MOTION TO GRANT THE SPECIAL USE PERMIT WITH THE FOLLOWING CONDITION:**

- **that the application receive site plan approval from the Planning Board**

SECONDED BY T. GERSTNER

VOTE TAKEN AND APPROVED 6-0-0

5. MISCELLANEOUS

Mr. Friedrichson reported that he was approached by Kirchhoff Construction regarding occupancy of the old Conklin building by the Anderson Center for Autism. He stated that, according to the Code, what is permitted on that site includes school conducted for profit. Ms. Czech noted that the Anderson School is not-for-profit. Mr. Friedrichson explained that this will be on the ZBA agenda at the next meeting for interpretation of his decision to deny their application for a Special Use Permit.

6. MEETING DATES FOR NOVEMBER & DECEMBER

Board decided to hold the next meeting dates will be: 11/15/07 and 12/20/07.

MEETING ADJOURNED BY CHAIRMAN DUNN AT 8:55 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the October 25, 2007, 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 15, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on November 15, 2007, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:35 p.m.

Members present: John Dunn, Chair
 Christina Perkins
 Ronald Vogt
 Tim Gerstner
 Helene Czech
 Ed Feldweg, Alternate
 Bob Maucher

Members absent: Lisa Rubenstein

Also present: Dieter Friedrichson, Zoning Administrator

1. **APPEAL #909 KIRCHHOFF PROPERTIES, LLC – VARIANCE**

Mr. Dunn stated that this appeal is for an area variance on a property at 5 Clinton Heights for the location/construction of a one-car garage. He noted that a building permit was previously denied. He stated that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 11/8/07
- Comment form from the Pleasant Valley Fire Advisory Board: no position as there are no fire or safety issues
- Recommendation from the Planning Board: positive recommendation
- List of adjacent property owners who have been notified of this hearing

Ms. Paula Vincitore, Kirchhoff Properties, was sworn in. She stated that this project is known as Habitat for Happy. She stated that Mr. Kirchhoff and his employees have chosen to volunteer to build this home for one of the Kirchhoff employees who would otherwise never be able to own his own home. She stated that John, who is the recipient of this home, is the happiest soul although he has had a very unfortunate life.

Ms. Vincitore stated that this property originally had a shack on it which they thought they would be able to restore but found it was much too decayed. Therefore, they razed the shack and built a new house. She stated that the plans also call for a single-car attached garage. She noted that the required side yard setback is 15' and that they only have about 8'. Therefore, they are requesting a 7' variance.

Ms. Vincitore displayed before and after photos.

Mr. Feldweg asked Mr. Kirchhoff to stake out the garage and noted the difficulty the ZBA has, when they do a site visit, to see where the building is going to be without the necessary stakes. He noted that when he visited the site today, with the mud and the slime, he was disappointed not to find the stakes in the ground. Further, he stated that he assumed that the fence is the property line. Ms. Vincitore stated that that is also their assumption.

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

2. APPEAL #910 BERGER – VARIANCE

Mr. Dunn stated that this appeal is for a property at 1153 Salt Point Turnpike and is for a 30' front setback variance for the construction of a 24' by 24' garage. He noted that the file contains:

- Recommendation from the Planning Board: positive recommendation if the applicant will situate the garage in a parallel line to the house; if not, the Board refers the application with a negative recommendation.
- Comment form from the Fire Advisory Board: no position as there are no fire or safety issues.
- Dutchess County Department of Planning and Development: no recommendation as it is a matter of local concern.
- Affidavit of publication in The Poughkeepsie Journal dated 11/8/07
- List of adjacent property owners who have been notified of this hearing

Mr. Rich Berger, 1153 Salt Point Turnpike, was sworn in. Mr. Berger stated that the garage will not be 24' by 24' but that it will be smaller. He stated that he's considering 24' by 20'. Mr. Dunn explained that the ZBA needs to know the exact size of the garage in order to know the distance from the center of the road and in order to grant the smallest variance necessary. Mr. Berger stated that he is reducing the size of the garage in response to the ZBA's request.

Mr. Feldweg asked which dimension will be changed and whether it will affect the setback from the road. Mr. Berger pointed out that the setback from the road will be the same either way. Mr. Feldweg noted, therefore, that the variance requested will be the same and that the dimension that will be changed will be the depth of the garage. Mr. Berger concurred with that statement.

Ms. Perkins asked whether Mr. Berger plans on making the changes that the Planning Board has recommended. Mr. Berger stated that his personal opinion is that, if the garage is parallel with the house, he will have nothing but a long house on his lot and that it will not look nice aesthetically. In addition, he also noted that he will still have yard behind it and that it makes it easier to redo the driveway so that his wife and daughter can pull into the garage more directly. He stated that he's going to use the same entrance off the Turnpike. He noted that if the garage were parallel, he would have to put in a lot more black top than what he thinks is necessary for what he wants to do.

Mr. Berger explained that he has moved it back to accommodate for the line of sight issue but that he cannot see making it parallel, which would make the driveway a large issue.

Mr. Maucher asked what variance Mr. Berger was asking for last time. Mr. Berger stated that he is now asking for a 30' variance and that last time he was asking for a 26' variance.

Mr. Feldweg asked if Mr. Berger would be able to use the same driveway or would he need a new driveway cut if he were to turn the garage parallel with the house. Mr. Berger stated that he is looking to cut back the driveway cut and that he can use the same cut with the plan that he has submitted. Mr. Berger stated that he thinks he would have to use the same driveway cut even if he were to turn the garage parallel with the house, simply because of the

difficulty of getting permission for another cut. Mr. Feldweg noted, and Mr. Berger agreed, that the driveway cut is wide enough now to accommodate what he is attempting to accomplish. Further, Mr. Berger stated that he's trying not to lose any more yard than he already has.

Ms. Czech asked Mr. Berger about other options for locating the garage on the property. He pointed out a maple tree and a shed on the property and explained why other options are not preferable to him.

Mr. Dunn noted that the recommendation from the Planning Board is positive if the garage is located parallel to the house and is negative if it is not. Mr. Friedrichson stated that the Planning Board's reasoning is that it looks better parallel rather than at an angle. Mr. Feldweg pointed out that Pleasant Valley does not have any architectural review authority and, therefore, the Planning Board's statement is an opinion.

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

3. APPEAL #911 WEST ROAD PROPERTIES, LLC – INTERPRETATION

Mr. Dunn stated that the applicant is located at 199 West Road, Town of Pleasant Valley in zoning district L-1. He stated that the applicant is asking for an interpretation to determine whether the Anderson Center for Autism Day Habilitation for Adults Program is to be considered for-profit or not. He noted that this appeal falls under Code Section 98-11, Schedule of Permitted Uses.

Mr. Dunn also noted that Appeal #912 from the same applicant is also a request for an interpretation of the same question but with regard to the Pre-School Program. Mr. Dunn stated that the ZBA will consider these two appeals individually.

Mr. Dunn noted that the file for appeal #911 contains:

- Recommendation from the Planning Board: positive recommendation
- Referral from the Fire Advisory Board: no position as it is strictly a matter for the ZBA
- Affidavit of publication in The Poughkeepsie Journal dated 11/8/07
- List of adjacent property owners who have been notified of this hearing

Mr. Rick Mitchell, attorney with Iseman, Cunningham, Riester & Hyde representing West Road Properties, was present. Mr. Dunn stated that, as an officer of the court, Mr. Mitchell is automatically under oath.

Mr. Mitchell pointed out the property on the map and stated that part of it is occupied by Kirchhoff Construction Management. He stated that this appeal concerns the rental portion of the property. He pointed out on the map the portion of the property that would accommodate the Day Habilitation program. Further he pointed out the neighboring West Road School and the Town of Pleasant Valley Park.

Mr. Mitchell stated that they submitted to the Town's attorney a letter with legal arguments and the school's charter. He stated that, without discussing the constitutional issues, they assert that the proposed use fits within the Town of Pleasant Valley Code. He stated that the Code has a use called "school conducted for profit" and noted that there is no definition in

the Code of a "school conducted for profit." He stated that the Anderson Center is a school and is chartered by the NYS Board of Regents and has been chartered since some time in the 1970's. He stated that they are a school that is run in this state.

Mr. Mitchell stated that this is an educational program for adults and older people who have autism to try to help them be able to deal with everyday issues. He stated that the Anderson School came to this site because it is a very good facility that will be well designed for the program; it is centrally located in the town and is right next to an existing school. He stated that the ZBA should have received a letter in support of this project from Mr. Frank Pepe, Superintendent of Arlington Schools. He stated that Mr. Pepe has offered a part of their facilities to be used for this program.

Mr. Mitchell pointed out that the issue hinges on profit. He stated that the Town's denial of their application was based on whether or not the Anderson School is a 501 c 3 organization. He stated that Anderson is a 501 c 3 organization, which is a tax designation but is not a for-profit designation. He stated that the question is what does profit mean. He noted that there is no definition in the Town Code, and therefore you look to the common meaning of profit. He stated that Webster defines profit as the sum remaining after all costs, direct and indirect, are deducted from income of the business. He stated that the programs that will be run in this site are designed to make a profit. He explained that parts of not-for-profit organizations can make a profit and frequently subsidize parts that do not. He stated that these programs are, actually, designed to make a profit. He stated that the Anderson School's position, therefore, is that this makes them a for-profit school and enables them to fit within that section of the Town Code and occupy the 199 West Road site.

Mr. Mitchell stated that the IRS 501 c 3 definition does not have anything to do with use, it is a definition of whether or not one can receive a deduction for gifts to the organization. From the use point of view, he stated that if there were a regular commercial corporation coming into this building it would not be any different from having the Anderson School on the premises.

Therefore, Mr. Mitchell stated that it is their position that the Anderson School is a for-profit school and should fit within the Code definition and should be an approved use.

Mr. Patrick Paul, Chief Operating Officer, of the Anderson School was sworn in. Mr. Paul stated that they run the adult day habilitation program in Hyde Park and that its purpose is to create an atmosphere where there is life-long learning for the adults. He stated that they have instruction, teachers, to teach them life skills. He explained that the program is to teach the adults real life skills, for instance how to manage money, and that there is a lot of socialization. He stated that one of the key elements for adults and children with autism is socialization and that they are teaching their clients how to socialize with each other. He stated that the clients will go out into the community and do community service. He stated that their clients have worked with the beautification of Hyde Park and would like to work with the folks in Pleasant Valley. He stated that they give their clients learning opportunities that are also opportunities for them to be productive.

Ms. Czech asked for confirmation that the adult program is for clients aged 21 and older. Mr. Paul stated that that is correct. Ms. Czech asked what the typical age will be. Mr. Paul stated that the typical age range is 21 to 35.

Ms. Czech asked why they would benefit from being next to an elementary school. Mr. Paul stated that there is no specific benefit in that case. Mr. Mitchell stated that that has more application to the pre-school program. Mr. Paul stated that one of the benefits of being in an area with other businesses is that it gives their clients an opportunity to do work in those businesses and learn from their involvement in those businesses.

Mr. Maucher asked for clarification of the fact that the Anderson School's application states that it is for-profit and that the Zoning Administrator stated that it is not-for-profit. Mr. Paul stated that he used to be the external auditor for Anderson and used to be the chief financial officer. He stated that the School makes money in the adult day habilitation programs. He stated that they lose money in other places. He stated that their whole idea is to make money, that they are like any other business, and that they expand using that money. Mr. Maucher asked if they pay income tax. Mr. Paul stated that they do not pay tax. He stated that the purpose of the 501 c 3 is that they are doing public work and that the not-for-profit requires that it does not inure to an individual. He stated that they do not have stockholders and there is no one who benefits personally from any profit. He explained that any profit stays in the organization, that if their day habilitation programs make \$200,000 at the end of the year after all their expenses, they may decide in the next year to use that money for some other program or may decide to roll it into some other improvement for the program. He stated that their idea is to make a profit. Mr. Maucher asked if there are any limitations on what the profit can or cannot be used for. Mr. Paul stated that he cannot think of any limitation except that it would have to be for the mission of the not-for-profit – increases in salary would be OK, starting new programs would be OK. He stated that profits generated in an existing program are used to initiate new programs or to offset losses in some other program. He stated that he can remember only two years when they did not generate a profit for the organization.

Mr. Mitchell pointed out that there are limits on salaries in not-for-profit organizations, which are carefully scrutinized by the IRS and the attorney general. Mr. Paul stated that the Anderson Center is very proud of the fact that for every dollar that they make or is donated to them, they spend 9% on administration and the remaining 91% is spent on programs for clients. Mr. Maucher asked whether, in general from year to year, they make a profit over all. Mr. Paul responded that, yes, they do make a profit. He stated that he can only remember two occasions when they lost money.

Ms. Czech noted that any money that they make as a profit must go back into the fund and be allocated in the next year specifically for what it was budgeted for. She noted that there are specific rules and that technically the Anderson Center is a not-for-profit organization under the 501 c 3 because they are receiving tax benefits. She noted that they may make a profit, but that it is still going back into specific places and that they are not like a commercial business which does not get the tax benefit. Mr. Paul stated that there is a board of directors which votes on a budget and that there may be contingencies that come up during the year that require changes to the budget. She stated that there are no owners and that the organization holds and maintains any profits to be used for its mission. Mr. Mitchell underscored that the money made must be spent for the organization's mission and there is no money that is taken off the top and there are no dividends disbursed in a 501 c 3.

Mr. Vogt asked why the two programs are not planned to be adjacent to each other in the 199 West Road building. Mr. Paul explained that they try not to mix children and adults and that they asked that there be some separation between them in the building. Ms. Perkins asked if

they would have a problem with them being next door to the elementary school. Mr. Paul stated that they have no problem with that. Ms. Perkins stated that she does have a problem with that. Ms. Czech stated that she was also thinking about this and asked whether the space between the programs in the building will remain empty. Mr. Paul stated that that suite would not be for the Anderson Center at all. Mr. Kirchhoff stated that they will use that space themselves.

Mr. Paul explained that the adults in the program have autism and not some other disability or impairment. Mr. Vogt explained that his reason for asking the question is that, since this site is zoned for light industrial, there could be other businesses that could be on the site. He stated that he is concerned that a business could generate something that would have a negative impact to the program and their clients, such as hazardous chemicals. He stated that his issue is a question of what they are mixing together in the same site. Mr. Paul stated that he was responding to the Board member's concern that the adults with autism would be next to a school. He stated that these adults are like everyone else, that they have autism, but that they are not predatory or potentially harmful. Mr. Maucher asked why, therefore, there needs to be a buffer between the children with autism and the adults with autism. Mr. Paul stated that it is a general idea of the funding sources, there are two separate funding sources, and that they do not want the Center to mix the children with the adults. He stated that it has always been that way and that they have always gone along with what has been required of them. Mr. Gerstner asked if it is a safety issue or a monetary issue. Mr. Paul stated that he does not have an answer. He pointed out that other organizations have mixed their adult clients with the children, but that it has always been frowned upon. Mr. Gerstner pointed out that if there is a safety issue between the Anderson adults and children, then why would the adults be right next to the community's children. Mr. Paul stated that he does not think there is a safety issue and that he did not imply that there is a safety issue. He stated that they do not want to crowd people with disabilities all together in one place right next to each other. He stated that the overall idea is to spread the people with disabilities out so that there is not a campus like Wassaic. He stated that the idea is not to mix the adult program in with the children's program. He stated that it is the same as not wanting to have an adult program in a local school while the children's school is in session.

Mr. Feldweg asked whether there are schools that are not not-for-profit that do, basically, the same thing as the Anderson School. Mr. Paul responded yes. Mr. Feldweg asked whether they operate with the same general criteria and the same general program. Mr. Paul responded yes. Mr. Feldweg stated that he's trying to find out why the ordinance is worded as it is. He stated that if there are other organizations that do not have the 501 c 3 tax classification and do the same thing with the same impact on the community, that is what he is looking at. He stated that he's trying to find out what the difference is, why the Town of Pleasant Valley has worded it this way.

Mr. Mitchell stated that they don't have a lot of information to provide to amplify that question as there is no definition in the Code of what a for-profit school would be. He stated that the use would virtually be the same, so theoretically you could have the same people in there – same teachers and same clients. He stated that the only difference is that one would be run by an Inc. and one would be run by a not-for-profit. Mr. Feldweg pointed out that at the end of the year the only difference would be who benefits from any profits earned.

Mr. Maucher asked about funding, whether there are any government funds that support the school. Mr. Paul responded yes. Mr. Maucher asked if they are, therefore, publicly funded.

Mr. Paul explained that it is fee for service. Mr. Maucher asked if there is any direct funding from the government to the Anderson School. Mr. Paul explained that they do not get grants; rather there is a contract for each student, which is known as a fee for service. He explained that the majority of clients who come to the Anderson School are government funded and that there are some private pay clients. Mr. Maucher asked if the Anderson School is a line item in the NYS budget. Mr. Paul responded no. He stated that if a child does not come to the School, they do not get paid – they are only paid for the children who are in their programs.

Ms. Czech explained that the adults in the day habilitation program are referred by the Office of Mental Retardation and Developmental Disability (OMRDD), typically. She explained that that gets funded through NYS and sometimes the County. She stated that the pre-school is funded a little differently. She stated that the adult referrals and funding come from OMRDD. Mr. Paul stated that if the adults are not there, they do not get paid. He stated that they must provide a service in order to get paid.

Public Hearing was opened.

Mr. Frank Pepe, Arlington School District Superintendent, was sworn in. Mr. Pepe stated that he would like to speak on behalf of the school district and stated that they hold the Anderson School and its services in the very highest regard. He stated that the school district is able to educate most of its autistic children on their own through the age of 21, but that there are occasions where their children may go to the Anderson School. He stated that the Arlington School has no objection to the presence of either of the Anderson School's programs and that he would hope that the adult clients of the School would be volunteers on their campus. He stated that they are happy to accept them as a neighbor. He stated that he and the school principal have talked about this and that with respect to the pre-school children, it might present an opportunity for the older 5th graders to provide some contact in a volunteer capacity. He stated that they see no concern from the point of safety of their children and that it might very well present some opportunity.

Mr. Dunn stated that the Public Hearing will remain open. He stated that he was contacted by the ZBA's attorney who had just received the applicant's documents and had not had time to review them. Therefore, Mr. Dunn stated that he would like to hear from the Board's attorney prior to making a decision and would like to keep this Hearing open until the next ZBA meeting.

Board and applicants discussed procedures regarding keeping the Public Hearing open. Mr. Feldweg asked what documents the ZBA and its attorney has received. Mr. Mitchell stated that the documents address the constitutionality issue and include the school's charters, as amended over the years, and program descriptions. Mr. Feldweg asked about the applicant's time constraints.

Ms. Maria Espie, Director of Business Affairs for the Anderson Center, was sworn in. She stated that, with respect to the Day Habilitation program, the OMRDD is expecting movement on this matter relatively soon. She stated that their goal is to open the facility in January 2008. Mr. Dunn assured her that the Board does not intend to prolong the process but that the subject is so important that it does merit careful review by the Board's attorney. Mr. Feldweg pointed out that the issue is not the aims or goals of the Anderson School but, rather, the only issue before the ZBA is to determine whether the Zoning Administrator's

decision that the Anderson School is a not-for-profit is accurate. He stated that that is the only question before the Board. He stated that he has heard enough testimony to make up his own mind that the impact as far as the Zoning Ordinance is concerned there really isn't any difference. He stated that the question is whether the Zoning Administrator made the right call or not. Therefore, he stated that he does not think the ZBA has to continue this process any further and that he would move to act on it tonight.

Mr. Feldweg: **MOTION TO ACT ON THE INTERPRETATION TONIGHT;
SECONDED BY R. VOGT**

Discussion: Mr. Feldweg stated that the motion is to proceed with the decision tonight because the only decision the ZBA is making is correct interpretation of what the Code Enforcement Officer said – it is not a school for profit or it is a school for profit is the only question before the ZBA.

Mr. Maucher pointed out that the letter that was sent to Mr. Volkman is focused on that very question – whether it is for-profit or not-for-profit. He stated he would like to hear what Mr. Volkman has to say about this. Ms. Perkins and Ms. Czech agree.

Mr. Friedrichson explained that the decision the ZBA is making is only whether or not the Board upholds or vacates his decision. He stated that if the ZBA vacates it, the applicant now has the green light to apply for a Special Use Permit, which already has been submitted. Further, he pointed out the delay involved in the site plan application process.

Ms. Czech stated that she could make a decision tonight on the interpretation.

Board discussed whether it can decide on the Special Use Permit tonight. Mr. Feldweg and Mr. Vogt agreed that the ZBA can only rule on the interpretation tonight because it was only advertised for an interpretation. Mr. Mitchell stated that they would be willing to accept the ZBA's vote on the interpretation tonight and, if it is favorable, they would be willing to file for the Special Use Permit.

VOTE TAKEN:	6-1-0
Mr. Maucher:	Opposed
Mr. Vogt:	In favor
Ms. Perkins:	In favor
Ms. Czech:	In favor
Mr. Gerstner:	In favor
Mr. Feldweg:	In favor
Mr. Dunn:	In favor

Public Hearing was closed.

4. APPEAL #912 WEST ROAD PROPERTIES, LLC – INTERPRETATION

Mr. Dunn noted that this application is similar to Appeal #911, an interpretation of whether the Anderson Center for Autism Pre-school Program for Children is to be considered for-profit or not. Mr. Dunn noted that the file contains:

- Recommendation from the Planning Board: positive recommendation
- Fire Advisory Board: no position as it is a matter for the ZBA

- Affidavit of publication in The Poughkeepsie Journal dated 11/8/07
- List of adjacent property owners who have been notified of this hearing

Mr. Rich Mitchell, attorney representing West Road Properties, LLC, was present. He pointed out that the only difference with this appeal is that the program is different and that the issue before the ZBA is the same – whether it is a for-profit organization or not. He stated that the issue is the same regardless of what the program is. He stated that they would consent to allow the record on the prior hearing (Appeal #911) to be used for this appeal, as well. Board members concurred that the record from Appeal #911 can stand for this appeal, as well.

Mr. Dunn asked whether the entire project is contingent upon the approval of both appeals #911 and #912. The applicant responded that it is not.

Mr. Mitchell asked the Board if they would like a description of the program at this time. Board members stated that it is not necessary.

Public Hearing was opened. No one from the public spoke. Public Hearing was closed.

DISCUSSION

1. APPEAL #911 WEST ROAD PROPERTIES, LLC – INTERPRETATION

Mr. Gerstner stated his opinion that the Anderson Center receives a tax break and is a not-for-profit organization. He stated, therefore, that Mr. Friedrichson's decision to deny their application was correct. Ms. Czech agreed that the question is whether the school is not-for-profit and that their tax status grants them the not-for-profit status. She stated that it is clear from their classification as a 501 c 3 organization and, therefore, the decision Mr. Friedrichson made is appropriate. She stated that their status is as a not-for-profit and it cannot be misconstrued.

Mr. Maucher stated that the applicant testified that their objective is not to make money for a corporation or a company or an owner but to be self-sustaining and self-supporting. He noted that their objective is not to earn a profit for the Anderson School and any money made in excess of their costs is turned back into their programs and the administration. Ms. Perkins agreed with this analysis.

Mr. Feldweg stated that if the ZBA upholds the Code Enforcement Officer's decision, then the application dies right here. Mr. Dunn agreed. Mr. Feldweg asked whether it is the feeling of the ZBA that they do not want this to happen in Pleasant Valley. Ms. Czech stated that the question is whether the Center is for-profit or not. Mr. Feldweg stated that if the ZBA wants this application to go ahead, then the Board cannot answer the question by upholding Mr. Friedrichson's determination. He reiterated that if the ZBA upholds his determination, the application will not go forward. Ms. Czech stated that the question is not whether it should go forward, but rather is whether the Center is a for-profit organization.

Mr. Gerstner stated that the question before the Board is an interpretation of the Code. Ms. Czech and Mr. Gerstner agreed that the Anderson Center is not-for-profit. Mr. Feldweg asked how the ZBA will work its way out of this. Mr. Gerstner and Ms. Czech agreed that

there is not a way out, that the Code is clearly written. Mr. Feldweg, again, stated that if the ZBA upholds the Code Enforcement Officer's decision, the application dies right here. He pointed out that, based on the evidence presented at this meeting, the ZBA can say that it is convinced that the Center is for-profit. Ms. Czech stated that she cannot say that, that she knows for a fact that it is a not-for-profit organization. She stated that it has no bearing on the program, rather it is a tax status conferred by the 501 c 3 classification.

Board members collectively asked why the Code is written to exclude not-for-profit schools. There was no answer.

Mr. Friedrichson stated that the ZBA can look into the Code as it is written and try to interpret or try to determine what the writers of the Code intended 30 years ago. He suggested that 30 years ago there may not have been anything in existence that was NYS funded that supported a program such as this – people who need help. He noted that in today's environment the ZBA can determine that what was written 30 years ago is now dated and that the Board does not think that the folks back then wanted to prevent a program such as the Anderson Center which has the public support to be eliminated. He stated that the ZBA could come to the conclusion that that is not really what they wanted to create and, therefore, not have to determine whether the school is or is not for-profit. He suggested that if the ZBA approaches this interpretation in that way it will not be challenged in court.

Mr. Maucher asked Mr. Friedrichson why he made the decision he did, given the argument that he just put forward. Mr. Friedrichson stated that as the Code Enforcement Officer he must go by the Code and does not have the discretion to interpret. Mr. Maucher stated that he cannot interpret the Code other than as it is written and that, apparently, 30 years ago they did not want a public school in a light industrial zone. Probably, they did not want to expose the children to whatever might be in an industrial area.

Mr. Friedrichson and Board members discussed charter schools and whether the Anderson School is a charter school. Ms. Czech asserted that every school has a charter but that a charter school is specifically different. Mr. Mitchell stated that Anderson has a charter from the State of New York as a school and that they operate under Article 89 for service to the handicapped individuals.

Mr. Richard Olson, attorney for the Anderson Center for Autism, stated that the questions for the ZBA are whether or not the Anderson Center makes a profit, whether the Code meant not-for-profit under the not-for-profit corporation law, which the Anderson School is not organized under, and whether profit simply means that you make money, which they do.

Mr. Dunn pointed out that in order for the Anderson Center to continue to provide services to its clients year in and year out it must make a profit over and above its costs. Therefore, he stated that the immediate interpretation is to say that the 501 c 3 classification defines them as a not-for-profit institution and the case is closed. However, he stated that he is not sure that such an interpretation addresses the entirety of this situation. Mr. Vogt agreed that the only way the Center can stay in business is to turn some sort of a profit from these programs in order to be self-funding. He stated that they are self-funding in the sense that if a student is enrolled by the State, they are paid for that student. He stated that they are not being paid by grant whether there is one student or 10 students. He noted that each student is referred and Anderson is compensated for each student.

Mr. Gerstner pointed out that they don't have to make a profit to pay their rent. He stated that because of their tax breaks, they are a not-for-profit.

Mr. Dunn agreed that the ZBA is answering the question of whether or not they are not-for-profit. He pointed out that the applicants testified that they do earn a profit over and above their costs. Ms. Czech stated that they are a not-for-profit organization. She stated that they may make more money than they spend, but it is not considered a profit because of their tax status. She stated that she does not know how you can get around that to cloud it or twist it to make it something different from what it is.

Public Hearing was reopened.

Mr. Richard Olson stated that it is their legal argument that the Town of Pleasant Valley Town Code does not exclude a not-for-profit. Rather he stated that the Code simply says a school for profit and does not deal with the corporate status. He stated that the Code does not have a definition or what for-profit means. He stated that the for-profit definition does not necessarily exclude not-for-profit. Therefore, he stated that their argument is that since the Code is ambiguous, at best, on this issue it has to be interpreted against the drafters, which is the Town of Pleasant Valley and in favor of the applicant. He stated that they have demonstrated the fact that the Center has made a profit, profit simply being defined as the fact that their revenues exceed their expenditures.

Ms. Czech asked how they get to have the tax status of a not-for-profit and get to do both. Mr. Olson stated that the tax status is irrelevant based on the ambiguity of the Code. He stated that the Code does not specifically state that it excludes not-for-profit corporations. Ms. Czech stated that the Center is trying to be both. Mr. Olson stated that they are not trying to be both. Rather he stated that since the Code only defines a school for profit, and if the Anderson Center makes money they are for-profit even though they have a tax status of 501 c 3. He again pointed out that the Code does not define not-for-profit and does not state that it excludes not-for-profit. Mr. Olson stated that the only definition he could find was in Webster's World Dictionary, which states that if your revenue exceeds your expenditures, you are for-profit. He stated that their entire legal argument is that the Code is not specific enough and that they meet Webster's definition of for-profit.

Board and applicants continued to discuss the definitions of for-profit as it pertains to the Anderson School. Mr. Maucher asked if people can donate money to the Anderson Center and get a charitable deduction as a result. Mr. Olson responded yes.

Public Hearing was reclosed.

Board agreed that it wants advice from its attorney before rendering a decision on this interpretation.

Mr. Vogt: **MOTION TO ADJOURN TO FUTURE ZBA MEETING IN ORDER TO GET ADVICE FROM ZBA ATTORNEY**

SECONDED BY C. PERKINS

VOTE TAKEN AND APPROVED 7-0-0

2. APPEAL #912 WEST ROAD PROPERTIES, LLC – INTERPRETATION
Mr. Vogt: **MOTION TO ADJOURN TO FUTURE ZBA MEETING IN ORDER TO GET ADVICE FROM ZBA ATTORNEY**

SECONDED T. GERSTNER

VOTE TAKEN AND APPROVED 7-0-0

3. APPEAL #909 KIRCHHOFF PROPERTIES

Mr. Gerstner asked why the applicant resurveyed the property and then discovered that it is smaller than originally thought. Mr. Vogt explained the chain of ownership and the history of subdivision on the property and pointed out who owns which lot. Ms. Czech asked how they got approval from the Board of Health. Mr. Vogt stated that it was pre-existing but that they had to put in a new septic. Mr. Friedrichson stated that they had to put in a new well.

Mr. Vogt stated that they already overstepped by redoing and expanding the home and that this is a severe application. Mr. Dunn agreed. Mr. Vogt pointed out that they are now encroaching on the property line, which they discovered from the resurvey. He stated that they have space behind the house to be within the side lot setback. He stated that they have options and that it is a cleaned up structure now which is adequate. He noted that there are plenty of places in Pleasant Valley and Salt Point that do not have a garage.

Mr. Gerstner stated that he does not have a problem with this application. Ms. Czech agreed that she does not want to deny him a garage. Mr. Vogt stated that it is on a private road so they could put the garage behind the house.

Board reviewed the map and discovered that the map, as submitted, is drawn exactly backwards as to how the house sits on the property – house is to the front of the property.

Mr. Friedrichson asked if the property was properly staked. Mr. Feldweg stated that it was not staked at all. Mr. Dunn agreed that the house does not appear to be 80' from the road, which is how it is shown on the map. Mr. Feldweg described the property based on his site visit and that the house looks to be about 30' to 40' from the road.

Board agreed that they cannot make a decision on this application because the information provided is inaccurate and incomplete. Mr. Dunn pointed out that if the drawing is inaccurate, then there is room to put the garage in the back and the variance will not be required.

Mr. Gerstner: **MOTION TO ADJOURN THIS APPLICATION TO A FUTURE ZBA MEETING IN ORDER TO RECEIVE ACCURATE MAP, CLARIFICATION OF THE PLAN, AND TO HAVE THE PROPERTY CORRECTLY STAKED.**

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 7-0-0

4. APPEAL #910 BERGER – VARIANCE

Mr. Vogt noted that the applicant is not sure what size the garage will be and that he would like it moved back. Ms. Czech stated that he could move it back a little bit more and noted that with regard to placing it in line with the house it is a matter of aesthetics, which the ZBA does not consider. Mr. Vogt noted that he did move it back, but that it could be moved further. Ms. Czech pointed out that the applicant wants to keep it on an angle so that he can get around and have a yard. She offered another design for the location of the garage.

Ms. Czech asked what constitutes a "substantial" variance. Board agreed that it is determined on a case by case basis, on each individual application. Therefore, Ms. Czech stated back that she does not think the variance applied for in this application is substantial.

Mr. Vogt argued that he still thinks it should be moved back a little bit further. Mr. Gerstner noted that the applicant moved it back 10' from the original application. Mr. Dunn stated that he has 100' to the rear property line. Mr. Maucher stated that the further back he goes the more fill and black top he has to put in. Mr. Vogt asked for another 10' further back which will provide more sight clearance for the road. Board reviewed the original design and the current design.

Mr. Gerstner, Ms. Czech, and Ms. Perkins agreed that the applicant met the Board's request to move the garage back and that the current design is adequate. Further, Mr. Feldweg noted that no neighbors showed up tonight to comment on this application.

Ms. Czech read into the record the Decision and Notice of Action of the ZBA Area Variance. The requested variance is a 30' front setback variance from Code Section 98-12 A, Schedule of Area and Bulk Requirements.

Ms. Czech: **MOTION TO GRANT THE VARIANCE; SECONDED BY J. DUNN'
VOTE TAKEN AND APPROVED 6-1-0**

5. MINUTES

Mr. Feldweg: **MOTION TO APPROVE MINUTES AS WRITTEN OF THE ZBA
MEETING IN OCTOBER 2007; SECONDED BY T. GERSTNER; VOTE TAKEN
AND APPROVED 7-0-0**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 10:00 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the November 15, 2007, 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 20, 2007

This meeting of the Pleasant Valley Zoning Board of Appeals took place on December 20, 2007, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:32 p.m.

Members present: John Dunn, Chair
 Lisa Rubenstein
 Ronald Vogt
 Tim Gerstner
 Helene Czech
 Ed Feldweg, Alternate
 Bob Maucher

Members absent: Christina Perkins

Also present: Dieter Friedrichson, Zoning Administrator

Announcement: Mr. Dunn announced that the appeals #911 through #915 have been withdrawn on advice of counsel. Further, Mr. Dunn stated that the public portions of the hearings on appeals #911 and #912 are now closed.

1. APPEAL #913 LUKAITIS – VARIANCE

Mr. Dunn noted that this is an appeal for a 9' variance from center of road setback requirement for the location of a storage shed on the parcel. He also reported that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 12/13/07
- The administrative decision of the Zoning Administrator denying the building permit
- List of adjacent property owners who have been notified of this appeal
- Recommendation from the Planning Board: negative recommendation as there is enough acreage on the parcel to locate the shed in compliance with the Town of Pleasant Valley setback requirements
- Referral from the Fire Advisory Board: no position as there are no fire or safety concerns

Mr. Joseph Lukaitis, 64 Whiteford Drive, was sworn in. He stated that this shed is for storage of lawn tools, that it is an older shed that the neighbors gave him as they sold their property. He stated that he moved it from the neighbor's property onto his own property and that he moved it back from the center of the road as far as he could. He stated that, because of the lay of the land, there is a very severe slope and also a lot of trees and rocks. Therefore, he stated that there is no way he can move the shed any further without damaging or destroying it. He stated that the shed is old but that he thinks it is still usable. He stated that he repaired the floor, which was rotted, and leveled it. He stated that it is usable. He stated that it would be prohibitively expensive and would cost more than the value of the shed to hire a crane to move it down to the lower part of his property. He stated that it is not practical.

Mr. Lukaitis stated that he took quite a bit of personal risk repairing the floor and leveling it. He stated that he knew he could make it usable and that it is not an eyesore. He stated that it is behind a tree and some brush. He stated that the door does not face the road and that it does not look bad at all. Mr. Lukaitis stated that he heard the recommendations and that he's a little disappointed and that he hopes that the shed can be salvaged and used.

Mr. Dunn asked how long Mr. Lukaitis has had the shed in that location. Mr. Lukaitis stated that it has been in that location since a year ago last summer. He stated that when he originally moved it onto his property it was much closer to the road than it now is, that it was around 40' from the center of the road, which is where it is nice and level. He stated that to move it further away is where the slope becomes more severe. He reported that at one point when he was moving the shed, he lost it down the slope and that it was stopped by a tree. He stated that the shed has been in its present location for over a year.

Ms. Rubenstein asked if he was cited or what brought him to the ZBA. Mr. Lukaitis stated that he wants to remodel their kitchen, including making it a little larger and consuming some of the backyard. He stated that the Zoning Office stated that he cannot do that because of the shed, that he needed a variance for the shed prior to getting the building permit for the kitchen. Ms. Rubenstein asked if this was the violation on the property. Mr. Dunn stated that the shed is in violation.

Mr. Feldweg asked if Mr. Lukaitis hired a crane to move the shed to his property originally. Mr. Lukaitis responded no and described the process of jacking it up and putting it on PVC pipes and towing it with his car as far as he could and then pushing it the rest of the way. He stated that that is when it started to go down the cliff and the tree stopped it.

Mr. Feldweg asked about Mr. Lukaitis' statement that he would need a crane to move the shed an additional 9'. Mr. Lukaitis explained that he cannot move the shed an additional 9' because of the terrain, but that he would need the crane to move it all the way down to the bottom to where the house is.

Mr. Maucher asked if the Harden property is adjacent to Mr. Lukaitis'. Mr. Lukaitis responded yes.

Mr. Feldweg stated that he visited the site and asked whether the land gets any flatter as you move back towards the Harden property. Mr. Lukaitis responded yes. Mr. Feldweg suggested the possibility of moving the shed back closer to the Harden property where it is flatter which might, then, meet the required setback. Mr. Lukaitis stated that that is a very good question and noted that several trees would have to come down in that area. He stated that he's not sure about the slope in that area. Mr. Feldweg stated that he casually looked at it and that it seems like an option that Mr. Lukaitis could consider. Lukaitis stated that he's not in a hurry and that he could consider this. Mr. Feldweg stated that if he could move it, there is no need to do so immediately.

Ms. Rubenstein asked what his timetable is for needing the building permit for the kitchen. Mr. Lukaitis stated that he does not plan to do anything about the kitchen until the spring. Ms. Rubenstein explained that if Mr. Lukaitis determines that he can move the shed and meet the setback requirements, he would not need to actually move it before he gets his building permit. Alternatively, she noted that if there is no way to move the shed, then this appeal can be adjourned and Mr. Lukaitis can return to the ZBA and report on the reasons why it cannot

be moved. She noted that Mr. Lukaitis is not obligated to take this suggestion and that he is entitled to asked for the variance.

Mr. Lukaitis stated that he's willing to look at the option of moving the shed closer to the Harden property. He did state that moving the shed is a problem but is not impossible.

Board members and Mr. Lukaitis discussed options for moving the shed and determined that the appeal will be adjourned in order to give Mr. Lukaitis the opportunity to look at the option of moving the shed. Mr. Dunn explained the ZBA's obligation to grant the least amount of variance possible.

Public Hearing was opened. No member of the public spoke.

Public Hearing will remain open and the appeal is adjourned.

2. APPEAL #909 KIRCHHOFF PROPERTIES, LLC – VARIANCE

Mr. Dunn explained that this is a continuance from last month.

Ms. Paula Vincitore, of Kirchhoff Properties, was present and was previously sworn in. She noted that there was some confusion last month regarding the location of the house in relation to the road. She provided a large scale map of the property and pointed out the private road that goes over the Kirchhoff property. She demonstrated where they have 80' from the front of the house to the property line.

Mr. Vogt stated that they need 60' to the feeder road. He stated that the drive is a feeder road. Mr. Feldweg asked who plows the road. Ms. Vincitore stated that she thinks the neighbors hire someone to plow it. She stated that the Town does not plow it, that it is a private road.

Ms. Vincitore asked what the front yard setback from the road is. Mr. Friedrichson stated that for minor roads it is 60' from the center. Ms. Vincitore acquired a ruler and measured the distance as 65' from the center of the road.

Mr. Feldweg asked Mr. Friedrichson to check on what the front setback is from driveways. Mr. Friedrichson stated that there is no such thing. He stated that there are minor, collector, and arterial roads. Board concurred that the private road does not fall into any of those categories. Mr. Feldweg asserted that the road that crosses the Kirchhoff property is a shared driveway and, therefore, there is no required setback from it. Ms. Rubenstein concurred with this analysis. Mr. Vincitore stated that it is a driveway that serves three houses. Mr. Feldweg pointed out that it is privately maintained by the landowners. Ms. Rubenstein concurred that they do not need a variance. Mr. Dunn concurred that they are in compliance.

Mr. Dunn stated that setback to the garage is still an issue. He read into the record a notarized letter from Mr. John Lictro, adjacent property owner at 22 Clinton Heights, Salt Point, NY, dated 11/16/07 in which Mr. Lictro states that he is very much in favor of granting the requested side lot setback variance for Kirchhoff Properties, LLC. Mr. Lictro stated that the improvements on the Kirchhoff property are excellent and that the addition of a garage will have also have a positive impact.

Ms. Vincitore displayed photos of the planned location for the garage. Board members discussed the correct measurement of the requested variance and determined it to be a maximum of 8.5'.

Public Hearing opened. No member of the public spoke.

Public Hearing closed.

DISCUSSION

1. APPEAL #909 KIRCHHOFF PROPERTIES, LLC. – VARIANCE

Mr. Feldweg stated that he has no problem with this appeal especially since the neighbor submitted a notarized letter in favor of the appeal. He stated that having looked at the site a couple of times he cannot see how it would be detrimental to the area. Mr. Vogt concurred that compared to what used to be there, it is a significant improvement.

Ms. Rubenstein read the worksheet into the record. The variance requested is from Code Section 98-12 and is 8.5' variance on the right. The benefit to the applicant is greater than the detriment to the neighborhood.

Ms. Rubenstein: **MOTION TO GRANT THE VARIANCE BASED ON THE DETERMINATION THAT THE BENEFIT TO THE APPLICANT IS GREATER; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 6-0-0**

2. MINUTES

Mr. Feldweg: **MOTION TO APPROVE THE MINUTES AS CORRECTED OF THE NOVEMBER 2007 ZBA MEETING; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 6-0-0**

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the December 20, 2007, 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