

PLEASANT VALLEY ZONING BOARD OF APPEALS

January 24, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on January 24, 2008, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:37 p.m.

Members present: John Dunn, Chair
 Lisa Rubenstein
 Ronald Vogt
 Helene Czech
 Bob Maucher

Members absent: Christina Perkins
 Tim Gerstner Tim Gerstner

Also present: Ed Feldweg, Zoning Administrator

1. APPEAL #892 CENTRAL HUDSON – VARIANCE

Mr. Dunn stated that this appeal is a carry over from the ZBA meeting on April 26, 2007 and noted that the adjacent property owners were notified of this night's hearing and that notice of this Public Hearing was advertised in The Poughkeepsie Journal.

Mr. Dunn explained that this appeal from Central Hudson on the Tinkertown Substation is to expand the size of the substation by an additional 3,450'. He noted that based on the current size of the substation, Central Hudson can expand it 1,650' per Town Code without any variance. However, since they want to add an additional transformer, the need is for the 3,450 sq. ft. beyond what is permitted, and therefore they have appealed to the ZBA for a variance.

Mr. Dunn stated that the Public portion of this hearing has been kept open.

Ms. Jennifer Van Tuyl, attorney for Central Hudson, presented a summary of the environmental review process and reviewed the applicable standards for variances for public utilities.

Ms. Van Tuyl stated that Central Hudson is seeking a variance from Section 98-31(B) of the Code in order to place a second transformer at the Tinkertown Substation. She noted that the Code of Pleasant Valley only allows public utilities in the Light Industrial and the Quarry Zones, but that this substation exists in an R-2 residential zone. She explained that the existing transformer was erected before zoning took effect and is, therefore, lawful. She read from Section 98-28 which delineates the lawful continuation of use of land although such use does not conform to the provisions of that chapter. Therefore, she stated that it is only the placement of the second transformer that requires a variance in this residential zone.

Ms. Van Tuyl noted that the ZBA discussed the text of this Section a little bit at its meeting in April 2007 regarding the legal expansion of the non-conforming use to not exceed 50% of the non-conforming use size. She stated that there was extensive discussion at the Planning Board and among the various counsel advising the Town and the Zoning Administrator

regarding the interpretation of “non-conforming use size.” She stated that they came to the conclusion that the appropriate “non-conforming use size” was the fenced area and she pointed this out on the map diagram that Central Hudson provided. She stated that they are seeking a variance for the additional 3,450 sq. ft. of the expansion because under the Code only an expansion of an additional 1,650 is allowed. She stated that with the addition of the second transformer they are doubling the size of the station.

Ms. Van Tuyl stated that in April 2007 when the hearings were first opened the ZBA properly suspended its review because the SEQRA process, evaluation the environmental impact of the second transformer, had not been completed. She explained that, following the April ZBA meeting, there transpired 7 months of intensive examination by the Planning Board. She submitted to the Board copies of all the documents that were listed in the ultimate conclusion made by the Planning Board. She stated that she would not attempt to review all those documents at this meeting but noted that she wanted the ZBA to understand the thorough review conducted by the Planning Board.

Ms. Van Tuyl stated that the key issues identified were exactly those that the ZBA identified at its April 2007 meeting: noise, oil containment, visual impact, and impacts on agricultural and historical resources. She stated that the Planning Board conducted a site visit which was attended by all the Board members. She stated that they examined the transformer and the areas surrounding the site.

Ms. Van Tuyl stated that the bulk of the analysis dealt with the issue of noise. She stated that both Central Hudson and Ms. Suzanne Horn, a neighbor, retained counsel and a noise consultant to assist the Board to take a very hard look at the noise impact. She pointed out that Central Hudson’s consultant advised that they did not believe that noise walls or sound barriers were appropriate or effective because of the ambient noise level. She stated that at the time that the proceedings went to the Planning Board, Central Hudson was not proposing any sound walls at all around either transformer.

Ms. Van Tuyl stated that the Planning Board hired its own noise consultant, who did noise readings and examinations and provided an analysis. She stated that this consultant concluded that there was no impact to the house area to the east – Ms. Horn’s house – but he did find that there were several areas in the lower pasture just to the east where variations in sound level would become more pronounced because of the second transformer. She stated that the consultant concluded that the second transformer was going to lead to more noticeable differentiation in sound. She stated that the consultant concluded that it would be appropriate that some type of methodology be employed to minimize that noise effect. Therefore, she stated that in response to the concerns expressed by the Planning Board, Central Hudson incorporated into its proposal a sound wall around the second transformer, which she pointed out on the map diagram of the substation. She described that the wall extends 20’ along the sides with two 10’ side walls and that these walls are 18’ tall. She noted that the side walls are at a 45 degree angle from the main walls and that they are intended to minimize the sound to the east. She stated that they are angled up by 7 degrees in make sure that they are not sending sound over to the properties to the left. She stated that the Planning Board, when doing its analysis, was equally concerned about impact on neighbors on all sides of the transformer substation.

Ms. Van Tuyl read from a letter, original is on file and copies are included in the ZBA's packet, dated 12/11/07 from Bagdon Sound Engineering – the Planning Board's sound consultant. She read from the conclusions:

- that for the property on the east, the second transformer will not be audible.
- that for the areas on the west, by tilting the barriers 7 degrees vertically, the reflected component of the sound will be angled upwards from the ground. This will enable the sound of the second transformer to combine with that of the existing transformer.
- that for areas to the north and south, the impact will be minimal due to attenuation over distance and by intervening trees, noting that the area to the south is relatively small and is near Route 44 where traffic noise is constant.

Ms. Van Tuyl noted the conclusion of the Town's consultant: after evaluating the noise wall methodology and based on their evaluation and independent testing they believe that "the proposed barrier will provide a sufficient level of attenuation of the sound pressure levels of the second transformer to render it unnoticeable."

With regard to oil containment, Mr. Van Tuyl noted that although oil containment is not technically required for a substation of this size, Central Hudson did incorporate in its proposed design a detailed system for oil containment which was reviewed by the Town engineer. She noted that the implementation of the oil containment system will be applied to both transformers – the existing transformer as well as the proposed second transformer. She stated that putting in the oil containment underneath the existing transformer naturally requires that the existing transformer to be raised by 12". Therefore, she explained that the question arose whether raising that existing transformer by 12" would have any noise impact. Again, she noted that the Bagdon, the Town's noise consultant, issued a letter to the Board stating that in their judgment this would have no impact on transformer noise levels in the surrounding area.

Ms. Van Tuyl stated that the last major issue that the Planning Board examined in its environmental review was visual impact. She noted that the ZBA Board members have a copy of that study in their packet. She stated that, based on the site visit, the Planning Board reached a conclusion that the area in the neighborhood of the second transformer along the eastern border, which she pointed out on the map diagram, was a little bit sparse in terms of evergreen vegetation. Therefore, she explained that Central Hudson hired a landscape architect and presented a proposed planting plan, which is part of the packet submitted to the ZBA. She stated that this plan is to be implemented under the architect's direction and will select two species of evergreen trees that will grow well in this particular area to provide additional buffering.

Ms. Van Tuyl noted that the neighbor to the east (Ms. Horn), through her counsel, argued before the Planning Board that a sound wall should also be placed around the existing transformer. She noted that the Planning Board did not require a sound barrier around the existing transformer. She stated that, with the proposed plan incorporating the sound wall around the second transformer, the Planning Board adopted a negative declaration on 12/11/07 and also at that time granted site plan approval, conditioned upon the ZBA granting the variance.

Ms. Van Tuyl pointed out that since this is a coordinated SEQRA review, the finding of environmental significance by the Planning Board is binding upon all involved agencies.

Therefore, she pointed out that the ZBA has every right to rely upon the Planning Board's finding.

Ms. Van Tuyl stated that the standards that apply to a variance for a public utility are in a class by themselves and noted that this Board is familiar with these standards given their experience with her colleague Mr. Neil Alexander with regard to an appeal pertaining to a cell tower in the Town. She referred to the letter that the Town attorney wrote to the ZBA for the April 2007 meeting. She stated that the relevant points are that the standards that apply to a public utility are different and more lenient than those that apply to any other use. She stated that the rule of law is that public necessity is the standard because utilities are required to provide electric service to the public that is adequate and in all respects just and reasonable. She read from Public Service Law sections 30 and 65 the specific requirements about Central Hudson – that they “serve residential customers without unreasonable qualification or lengthy delays and also that every electric corporation in every municipality shall furnish and provide such service, instrumentality, and facilities that shall be safe and adequate in all respects just and reasonable.” Ms. Van Tuyl stated that Central Hudson certainly has the duty of delivering electric service in an adequate manner to the consuming public.

Mr. Pat Harder, engineer for Central Hudson, was sworn in and provided testimony regarding:

- the increase in demand that the substation has been experiencing
- the advantages of the two transformer system in terms of its reliability and its redundancy and permitting repair
- that the conversion to this two transformer model is actually congruent to improvements that Central Hudson has been making to other substations in the area.

Mr. Harder submitted and explained some graphs depicting the increase in demand for electric service over time. He reported on the increase in population in the Town of Pleasant Valley from 1960 to 2006 and stated that the data was taken from the Dutchess County Clerk's census data. He reported on the increase in the average residential electrical usage from 1980 to 2006. He reported that the electrical usage by residential customers in the Town of Pleasant Valley has doubled in the last 25 years. He reported on the peak electric use that the Town of Pleasant Valley transformer has sustained since 1981 to 2007. Mr. Harder pointed out how certain customers were taken off the Tinkertown substation and transferred to other local substations:

- 2001 - Dutchess Quarry was transferred to the Hibernia substation
- 2005-2006 – a big portion of Salt Point was taken off
- 2006-2007 – a portion of Freedom Road was taken off

Mr. Harder displayed and explained a color-coded map depicting the individual substations and the areas that each one services in the area. He explained that the Tinkertown substation, the Pine Hill station in LaGrange, and Manchester, Inwood, and East Park stations all feed into Pleasant Valley. He explained that, before the load shedding was taken off (described above), the Tinkertown substation serviced a larger area. He stated that at this point the Tinkertown substation cannot take any more power from the neighboring substations to push into Pleasant Valley. He stated that they are at the point where they need to make improvements to the Tinkertown station.

Mr. Harder stated that adding the second transformer will accomplish two things:

- lower the level of the existing transformer
- supply back up in case the existing transformer had a problem, in which case they could shift the load for a short period of time

Mr. Vogt asked about the cost for the fiberglass barrier around the new transformer and explained that he is curious whether it would be reasonable to ask for a noise barrier around the existing transformer. Mr. Harder stated that the cost for the sound walls is approximately \$70,000.

Ms. Van Tuyl noted that if anything did happen to the Tinkertown substation there would be approximately 4600 people who would be without power and that there would not be any way to manage with other substations and that there could be a significant period of outage. She explained that, for this reason, it is necessary to have this equipment upgrade.

Ms. Van Tuyl stated that, in closing, she wished to emphasize the following: “where the intrusion of burden on the community is minimal the showing required by the utility should be correspondingly reduced.” She stated that the negative declaration that the Planning Board adopted shows that there is not any significant burden on the community. She stated that the Town’s noise consultant used very strong words – that the barrier would render sounds from the proposed second transformer unnoticeable and that raising the existing transformer 12” “would have no impact on transformer noise levels in surrounding areas.”

Ms. Van Tuyl stated that the second transformer is needed and asked the ZBA to permit the additional 3,450 sq. ft. to allow that second transformer. With regard to the installation of a noise wall around the existing transformer, she pointed out that the Town Code protects the existing transformer – Section 98-28 says that pre-existing uses have a lawful right to continue. She stated that the variance being requested only applies to the second transformer and stated that Section 267 B of the Town Law regarding proper conditions on variances provides that variances shall be imposed for the purpose of minimizing any adverse impact said variance may have on the neighborhood or community. She stated that Central Hudson has met the Town more than half way in significant expenditures of \$70,000 on a noise wall on the proposed second transformer to ensure that there is no impact from it. She stated, therefore, that any further condition is not warranted.

Ms. Suzanne Horn, 1971 Route 44, Cedar Crest Farm, Pleasant Valley, NY. Ms. Horn read into the record a letter she sent to the ZBA (original on file) in which she requests, as a condition for the variance:

- a sound wall around the existing transformer
- a quieter, brand new transformer rather than a used transformer

Ms. Horn’s letter states that in the alternative the ZBA require a post-test by the Planning Board’s sound experts to make sure that noise increases are less than 3 decibels and to require a performance bond.

Ms. Horn stated her concern about her present day use of the land. She stated that Central Hudson has for the past year of this deliberation tried to place her in the house, which is located to the east of the pasture. She stated that is not so, that she spends every day and a good portion of the evening and well into the night in activities out in that pasture. She stated that she does not have a front yard and a very small area behind her house, the area

that she refers to as the pasture is her side yard and is the place where she enjoys all of the simple pleasures of country life and that she has improved over the years for the activities of animal husbandry in which she is engaged.

Ms. Horn pointed out that it is an R-2 zone and that it is not inconceivable that she may need to place a dwelling on the western portion of the land, even though her public and private life is devoted to conservation.

Ms. Horn reviewed the Bagdon noise study. She stated that the Bagdon report of 12/11/07 states that not all sound will be attenuated by the barrier and that Mr. Smith, the noise consultant, described for the Planning Board how the two faces radiate noise and create two circles of sound. She stated that the noise consultant explained that when these two circles meet, there is a spike in areas along that pasture where there is a rise of 6-7 decibels. She stated that Bagdon specifically says that the noise from the second transformer will not be stopped by the wings, that the noise will reach the first transformer, combine with it, which will raise the noise in a 2.5 acre area of her land - which is the area where she spends most of her time and which is also the area that could be the site of a dwelling. She stated that in addition to the wings not stopping that line of sight noise, because of the way the transformer is situated and the way that her land wraps around it, that area is exposed to what Bagdon described as the 45 degree angle where two faces of the transformer radiate noise and elevate the level of noise that is produced. She stated that, therefore, not only is the line of sight from the second transformer to the first is raising the noise, but the cumulative effect of that combined with this 45 degree angle rise in the noise.

Ms. Horn stated that Bagdon also described in its presentation what it is like for somebody moving about in the pasture area. She stated that the noise consultant described this as the "picket fence effect" - that the sound comes and goes as you move about the pasture. She stated that it is the most irritating experience that she could possible describe. She stated that not only does it exceed the EPA guidelines, but the on again, off again effect exacerbates the impact. She stated that the Bagdon report states that this effect will not be controlled by one barrier.

Ms. Horn stated that when Mr. Harder appeared before the ZBA months ago, he testified that the two barrier plan, based on Central Hudson's consultant, would be good at this substation. She stated that when Central Hudson realized the cost of the barrier, which was quoted initially as \$100,000, then the offer of putting up two barriers was withdrawn. She stated that Central Hudson also could have chosen to put up a new quieter transformer and that they told the Boards that \$1 million was too much for them to spend. She asked if that means that the neighbors should absorb the cost when the vagaries of Central Hudson's accounting for its costs are its only excuse for not protecting adjacent land from the intrusion of this noise. She stated that the Board should consider in granting a variance whether this is a hardship. Further, she stated that Central Hudson has failed to show its hardship and that there is absolutely no reason why all of the thousands of customers that stand to benefit from this addition should not also share in the cost rather than imposing it on an adjacent land owner.

Ms. Horn displayed some photos of the area that Bagdon identified as being wooded. She stated that she thinks this is a mistake, that the area has some sparse straggly sprouts and some tangles which she stated she would hardly call wooded.

Ms. Horn asked the ZBA to deny the variance or, in the alternative, to require the two noise barrier system that will truly protect adjacent land from the intrusion of noise. She stated that Central Hudson has not met the test of hardship for an area variance. In the alternative, she requested a post-test which, if when done, shows an increase in noise of 3 decibels, then the second barrier can be erected at that time. However, she stated that it would seem expedient to take care of this at the outset.

Mr. Dunn stated that, based on his reading of the Bagdon report, the noise of the second transformer would be mitigated by the walls and what would remain is the hum from the existing transformer. Based on his reading of the report, he noted that there would be no additional noise in the area.

Ms. Van Tuyl responded to Ms. Horn's statements and stated that nothing was overlooked by the Planning Board and commended to the ZBA the entire file. She stated that Ms. Horn made exactly the same arguments to the Planning Board that she has made here to the ZBA and that they were rejected by the Planning Board. She stated that Bagdon did not recommend the sound wall around the existing transformer nor did the Planning Board after months and months of review. She stated that the standard is not hardship; rather the standard is the public necessity test which has been more than met. She stated that the quieter equipment at \$1.5 million per transformer has been discussed and NEMA standards, which are quoted in their application, show that those new pieces of equipment are 0-2 decibels quieter and is not an observable difference in noise. She stated that it is completely false to say Central Hudson represented to the Planning Board that they were going to install two transformers. She stated that the statements made to the ZBA in April 2007 were made enthusiastically and under great stress and pressure of wanting to get this second transformer up because there is an urgent need for it. Instead of being able to do that, she noted that they proceeded through a 7-8 month very expensive and extensive planning process to engage the question and retain experts. She stated that the Town's noise consultant did not recommend the noise barrier on the existing transformer. Further, she pointed out that is something that is an existing, approved non-conforming use which the applicant has the right to operate and that, therefore, there is no legal basis for requiring mitigation of an existing condition. Ms. Van Tuyl stated that she thinks that Ms. Horn is asking the ZBA to repudiate the findings of the Planning Board that took place after months and months of study. Finally, she stated that there is no basis for monitoring and that the same claims were rejected by the Planning Board. She stated that those types of requirements can only lead to extensive harassment.

Ms. Horn stated that the Planning Board did extensive review and that the Bagdon report is quite fine. She stated that she has never brought up anything that she said tonight with the Planning Board with regard to this finding by Bagdon that the line of sight from the second transformer that combines with the first will not stop that noise coming onto her land. She stated that it was not brought up and that Bagdon said throughout the report that any noise that is coming around and over the barrier will combine on the normal manner with the existing transformer. She stated that the normal manner that Bagdon described extensively are the peaks and nodes where sound increases and that that will continue in various and extensive areas along this western area of her land. She stated that the Board may have assumed that there would be no increase in noise and pointed out that Bagdon does not say that, rather that Bagdon says that there will be noise. She asked the Board to consider whether a land owner should bear the cost of this intrusion or whether Central Hudson and everybody who benefits from this addition should bear the cost and use two barriers.

Ms. Van Tuyl stated that it should be noted that the existing transformer has been on that site since 1957, 20 years prior to Ms. Horn acquiring her property, and that the noise it is emitting today is no different from the noise it was emitting then.

Mr. Maucher asked what the size of Ms. Horn's property is. Ms. Horn stated that she owns just less than 48 acres.

Public Portion of the hearing was closed.

2. APPEAL #916 WIKANE – DOGGIE DOO'S – SPECIAL USE PERMIT

Mr. Dunn noted that the applicant is proposing to establish a dog grooming business as a home occupation at a home at 113 Rossway Road which requires a Special Use Permit. He reported that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 1/22/08
- List of adjacent property owners who have been notified of this hearing
- Referral from the Fire Advisory Board: no fire or safety issues
- Referral from the Planning Board: positive recommendation with concerns for traffic, septic, water, parking, and lighting.

Ms. Jacqueline Wikane, P.O. Box 752, Pleasant Valley, NY, was sworn in. Ms. Wikane explained that she would like to purchase the home at 113 Rossway Road. She stated that she has had a dog grooming business on Route 44 in the Town of Pleasant Valley since 1994 and that she wishes to move her business into the residence. She stated that she is requesting the Special Use Permit for this purpose.

Ms. Wikane displayed the plans and the map and explained the layout of the property and pointed out the adjacent neighbors – the Daleys. She noted a property, behind the site she wishes to purchase, that is also for sale.

Mr. Vogt asked if Ms. Wikane's current location is the existing business above the Deli in the plaza. Ms. Wikane confirmed this. Mr. Vogt noted that he currently brings his dogs to Ms. Wikane's shop for grooming. He and Mr. Dunn and Board members discussed the matter of Mr. Vogt recusing himself from this appeal and determined that it is not necessary for him to do so.

Ms. Rubenstein asked how many employees Ms. Wikane has now. Ms. Wikane reported that she has one employee and that she will continue to have just one employee if she is granted this permit and the business is moved into the residence. Ms. Rubenstein asked what the employee's hours are. Ms. Wikane reported that her employee works from 9 a.m. to 5 p.m. and stated that they operate 5 days per week – Tuesday through Saturday – and that the employee does not work on Saturday so that she is only there 4 days.

Ms. Rubenstein asked about the number of dogs she has per day. Ms. Wikane stated that it normally runs from 7 to 10 per day. Ms. Rubenstein asked how many would be there at one time. Ms. Wikane explained that the appointments are staggered, that the owners come in on a rotating basis, so at one particular point during the day they could have all of the dogs there. She stated that during the afternoon, the owners return and pick their dogs up as they are completed. She stated that as the grooming is finished, she calls the owners to come pick

them up. She stated that she tries not to leave the dogs there all day long as it is stressful enough for them to be there. She stated that if people work, the dogs are welcome to stay.

Ms. Rubenstein asked where in the new residence the dogs would be kept during the period of time they are waiting and then when they are done. Ms. Wikane stated that they will be kept in the house. She explained that they plan on converting the bottom of the home into a dog grooming shop. She explained that the house is a high raised ranch.

Ms. Czech asked if it would have a separate entrance. Ms. Wikane responded yes. Ms. Czech asked if the dogs are kenneled in the house. Ms. Wikane responded yes – that they have crates. Ms. Czech asked if the dogs could get out, potentially, or if there is a barrier between the kennels and the door. Ms. Wikane explained the layout, in her current location, of the reception area as separate from the grooming area and the area where the dogs are crated. She stated that she will probably do the same thing in the new residence. She stated that when the dogs needs to go out, they put the dogs on choke chains and take them out for a walk and bring them back into their kennels. She stated that they have beds, pillows, and blankets for the dogs and that the dogs are never left outside.

Mr. Vogt asked if Ms. Wikane owns this property on Rossway Road. Ms. Wikane stated that she's trying to purchase it. Ms. Czech asked where she current lives. Ms. Wikane stated that she lives on Rochdale Road.

Ms. Maucher asked if Ms. Wikane boards any dogs. Ms. Wikane stated that she does not board dogs. She stated that she has one dog, an afghan hound that is 7 years old.

Ms. Rubenstein asked if Ms. Wikane saw the letters that the ZBA received and noted one in particular from a neighbor who had a bad experience with the previous owner of the property who had a home computer repair business with people driving over their lawn and their driveway. Ms. Wikane stated that they were backing up on the neighbor's property.

Ms. Wikane pointed out on the map a section between the two houses that is open and where she plans to install a privacy fence to give the neighbor privacy and quiet and separation. She stated that she wants to prevent anyone from turning around onto the lawn in that area. She explained that the fence will be solid and will provide a physical and visual barrier.

Ms. Czech asked about the layout of the driveways, whether they are shared or parallel. Ms. Wikane stated that they are parallel.

Ms. Rubenstein asked where on the property Ms. Wikane will walk the dogs. Ms. Wikane stated that the dog walking area will be behind the house and that once she gets into the house she will create a restricted and designated area for dog walking.

Ms. Czech asked if Ms. Wikane will be scaling the business down when she moves it into the residence. Ms. Wikane stated that she will not be scaling the business. She explained that the property where her business currently is was sold and that the existing landlord is going to be changing the upstairs of the entire plaza into just offices. She stated that the new rent is astronomical and is much more than she can afford and that she would have to be grooming dogs 24 hours a day. Ms. Rubenstein asked if it is in the Family Circle Plaza. Ms. Wikane responded yes and stated that she's been in that location for a really long time.

Mr. Dunn read into the record the following notarized letters (originals on file) from adjacent property owners:

1. Langston dated 1/23/08
2. Daley 1/23/08
3. Daley, Brill, and Farinacci dated 1/24/08

All neighbors expressed objections to this appeal and requested that the ZBA not grant the Special Use Permit.

Mr. Maucher asked for confirmation that Ms. Wikane said 7 to 10 dogs per day. Ms. Wikane responded yes and stated that the neighbors who submitted these letters have brought their dogs to her over the years for grooming. She stated that she does not understand how there would be an odor or a smell from her business. She stated that it is just not the case, that the dogs will be kept inside, that she runs a clean business, and that she has been in this town for a very long time. She stated that she provides a good service. She explained that if she is granted the Special Use Permit then she will proceed with the home purchase.

Mr. Leroy Mitchell, 111 Rossway Road, Pleasant Valley, NY, was sworn in. He pointed out that his wife, Mrs. Mitchell, was also in the audience. He stated that he has nothing against the applicant but has many concerns about what would come along with this business being approved in the residence next door to his home. He stated that he has already had experience with the previous owner's animals, that she had animals that would get loose and poop in his yard. He also stated that the traffic was tremendous. He stated that the driveway is only 20' to 30' away from his house and that they heard everything that does up and down that road. He stated that Rossway Road is bad enough as it is. He stated that both he and his wife have health problems and that they need rest and sleep and that they are not kids anymore. He stated that they do not want this appeal to happen and that they are very concerned about the barking and the traffic. He stated that 10-12 people coming twice a day is excessive. He stated just with the potential buyers coming to see the house now has picked up the traffic. Again, he stated that he has nothing against the applicant trying to have a business, but stated that you have to look at what comes from that. He stated that Ms. Wikane cannot say that the dogs won't get away, that she will always keep them in. He noted that they had the same problem with the previous owner and she could not say that. He stated that he constantly had to tell her that the dog is loose. He stated that they just got rid of that problem when the old lady moved out – they had the animals to contend with and the husband had a computer business which was crazy traffic cutting through their yard. He stated that they had officers several times coming to their house concerned about the animals and asking how he feels about what was going on next door. He stated that since she had moved, the traffic has slowed down and that they are still dealing with the noise from Rossway Road, itself, which is not pleasant. He stated that they don't see where there will be any good coming out of that if this permit is granted.

Mr. Maucher asked where Mr. Mitchell's house is located. Mr. Mitchell stated that they are directly in front.

Mr. Wikane stated that she understands Mr. Mitchell's concerns. She stated that she does not know anything about the previous owner of the house, although that she did hear from Ms. Daley that the owner had a lot of dogs. She stated that she does not have a lot of dogs, that she has one dog who is a couch potato who only goes outside to be walked. She stated that the people who bring their dogs to her, drop them off at 9 a.m. and pick them up by 5 p.m. and that they do not all arrive at once. She stated that the appointments are staggered

and that they try to spread people out so that they are not all coming at once. She stated that she understands that the driveways are fairly close to one another and stated that she will do whatever she needs to do to address Mr. Mitchell's concerns – erecting a fence would be fine and provide them a little more privacy. She noted that she would erect a fence on the Daley side also.

Mr. Peter Karis, 99 Rossway Road, Pleasant Valley, NY, was sworn in. Mr. Karis stated that his property is 2 houses over from Mr. Mitchell's house. Also, he informed the ZBA that he is a member of the Pleasant Valley Planning Board and noted that he recused himself from the recommendation that Planning Board made to this Board so that he could speak to the ZBA without having any input on the action of the Planning Board. Mr. Karis stated that he would talk about 3 issues that concern him, one of which is paramount to the use.

Mr. Karis stated that the ZBA has been asked to consider a Special Use Permit for a dog grooming business. He stated that the business is currently located at the Family Circle Plaza, which is a commercial center that just had a septic system that was blown out from water usage. He stated that this application is taking a commercial use which the ZBA is being asked to put onto a road that does not have, to his knowledge, any other commercial use in any other structures along that road. He stated that even though it may seem small and some of the associated impacts may seem small, it would definitely change the character of the neighborhood by adding this business. He stated that the ZBA should be careful about setting any kind of precedent for other businesses and home occupations – not that home occupations should not be encouraged, but they need to be considered in the location where they are proposed. He stated that Rossway Road is a pretty busy road during the peak hours of the day. He stated that the speed limit is 40 mph and that he has seen people pass school buses on Rossway Road.

Mr. Karis noted that 7 to 10 dogs per day is proposed going in and out of the property, dropped off in the morning and picked up in the afternoon into the evening hours. He noted that they would be staggered during the day with peak times of cars going in and cars coming out. He noted that people travel 60 mph on Rossway Road. He stated that he is very concerned about this additional traffic going and out on Rossway with peak delivery and pick up hours being the peak times that people are using Rossway Road. He stated that the reason he cautions the Board to be careful about what the ZBA is setting up for the future is because the volume of traffic on Rossway Road. He stated that he is not aware of DOT plans for the Taconic and Rossway Road that would turn it into a quiet dead end street again. He stated that he's a landscape architect and that he likes the idea of having a small home office in his home at some point in time, but that is a much different use. He stated that he likes the idea of having that option for himself and for somebody else. But he stated his opinion that this application is a little different, that it is coming from a commercial building and being moved into a residence in an area where there are no other commercial uses. He asked the ZBA to be careful in considering this application in setting up other applications about this road in the future.

Mr. Karis stated that his second issue is traffic and the 7 to 10 cars a day with the impacts associated with getting into and off of Rossway Road. He stated that he sympathizes with Mr. Mitchell and the fact that his house is right in front of this property and that his driveway is right next to this driveway. In fact, he pointed out that there are 3 driveways sandwiched together, two long ones and then Mr. Mitchell's driveway. He stated that he expects there will be a sign out front, and noted that Mr. Mitchell will have to deal with 14 cars trips a day

going right next to his house in the morning and at night. He stated that that is an impact on his quality of life that would not exist if this were just a single family residence. He stated that the Board needs to consider the impacts to Mr. Mitchell and consider what kind of mitigation, if any, that meet his satisfaction and makes him more comfortable. Mr. Karis noted that Mr. Mitchell and the neighbor to the back are the two properties that are impacted directly by that house becoming a home occupation. He stated that the Board needs to be aware of this in considering this application.

Mr. Karis stated that his third issue is the water usage associated with this use. He stated that this house was designed in the late 80's for a 3 bedroom septic system and was constructed that way. He stated that that handles and is designed for 450 gallons per day. He stated that on top of that there would be a water intensive use, adding water into that septic system. He stated that there needs to be some kind of concern attached to this Special Use Permit that the septic system is designed to handle that. He stated that he trusts that Ms. Wikane knows what her water usage is in the commercial building. He stated that, at a minimum, the ZBA needs to consider having some input from the DC Health Department on that septic system. He stated that that is a real health, safety, and welfare issue on the water quality and for the neighbors in the area. He stated that if there's a failing septic system, that is a problem.

Mr. Karis stated that there are a couple of items he would like to ZBA to consider if it does grant the Special Use Permit:

1. getting a letter or approval from the DC Health Department for the septic system – that it needs to be proven out and signed off on that the septic system can handle the water flow coming out of the house and from the commercial use
2. hours of operation: these need to be clearly spelled out and attached as a condition to any Special Use Permit from this Board to ensure that the quality of life impacts to the adjoining properties will be minimized. He stated that he does not think it is fair for people to bring their dogs to a residential area on Saturday with 14 car trips in and out of the house when someone is trying to enjoy their home on the weekend.

Mr. Karis also suggested that, if the ZBA grants this permit, a time limit be imposed on this Special Use Permit. He explained that he sees in the future the potential for this business and this house to be sold and continue the dog grooming business by a new owner. He stated that Ms. Wikane will be a good neighbor and that she runs a clean business. But, he noted, that the next owner might not and might not play fair and be as nice to the neighbors as they should be. He suggested that if the ZBA grants the permit there be some kind of time limit on this commercial usage.

Mr. Mitchell stated that 10 cars in the morning and 10 cars in the evening is quite a bit and is heavy traffic. He stated that the well and septic for that property are on his property line and that he has not pushed the issue about this. He stated that the previous owner's original well went dry and that she dug a new well on his property line, and maybe over the line. Also, he stated that his property includes 50' on the left side of the house that goes all the way back to the adjacent property. He stated that she only has a small portion of property in the front of her house, that his property butts right up to the front of her house and almost into her front door. He stated that she has about 15' from her steps to his property line.

Mr. Mitchell stated that he and his wife hope to have a peaceful life and with this business coming in it will not be peaceful anymore. He stated that they have enough traffic running up and down the road as it is, blowing their horns and killing the animals. He stated that they

have a multitude of animals that come through the yard – deer, raccoons, squirrels – and that they all get killed. He stated that in the past couple of years officers are stopping people on the road itself. He stated that constantly all this past week the troopers were stopping people right in front of their home. He stated that to bring in more traffic, people that they don't know, and that a lot of people who don't know where they are going will come to his door and ask for directions. He stated that they will pull into his driveway looking for the other driveway. He stated that he does not see how this can be fixed because there will still be those 20 cars per day. He stated that they cannot say what will be good and what will be bad, that you have to experience it first to determine what will come out of it. He stated in the past 10 years that they have been there he has not seen anything good with the previous owner with the husband's business. He stated that his wife has constantly had to tell him to go and confront those people about this and that and that now it will be the same thing all over again.

Ms. Wikane explained that the Family Circle Plaza septic system failed due to vandalism, that the door to the property had been left open, which was always left open. She stated that someone smashed the tank and the alarm went off and that when she investigated there was 6' of water in the basement. She stated that it was not due to her grooming dogs that made the whole system fail. She stated that it has been there since 1991, when the building was put in along with the gym and the deli and everybody using their toilets.

Ms. Wikane pointed out Mr. Mitchell's house on the map and her house and the wooded lot that separates their houses. She stated that if there are cars going up and down the driveway and if it is required she will be willing to put in a pull out area so that one car can enter and one car and depart. She stated that she spoke with the Health Department, that she met with Mr. John Blast, the head of the Health Department. She stated that he has already told her that the Health Department will sign off with a letter stating that the usage of the septic system, with the amount of water that she uses, is sufficient. She stated that he told her that she needs to add one more line to the system to accommodate the water. She stated that she is a single person living in a 3 bedroom home. She stated that she has 2 children and is divorced and that her boys will come to visit from time to time and occasionally stay. She stated, therefore, that the usage of water as far as the septic system is concerned is not an amount that you would have with 4 people living in the house.

Ms. Rubenstein asked if Ms. Wikane can provide a written statement from the Health Department. Ms. Wikane responded yes, she will receive such a letter from the Health Department and will provide this to the Planning Board per its request.

Mr. Mitchell stated that he is adjacent to that property and that he has a survey map that shows everything. He pointed out the grade which is dangerous. He stated that he owns the property on the front all the way back and that the previous owner only has about maybe 15' from her front door to his property. He pointed out his property on the map. He stated that right now there are cars on his property, there's a camper, a dog house, and that no one as yet has moved any of these things. He stated that he was told to move it himself, but that he should not be responsible for those things that he does not own and that he did not put there. Mr. Dunn noted that that is something Mr. Mitchell will have to take up with the previous owner.

Mr. Mitchell stated that Ms. Wikane is talking about 20 people a day and that these people may bring more people and that it may increase itself. He stated that they are in close to each

other. He stated that he and his wife talked about it and that they are trying to keep the peace. He stated that he does not want to be put into a situation that they just got out of. He stated that dogs do bark and that you cannot stop a dog from barking and that barking will wake you up.

Mr. Dunn thanked Mr. Mitchell for his testimony and stated that the Board will take his concerns into consideration.

Ms. Rubenstein asked Ms. Wikane what kinds of chemicals she uses in her dog grooming business. Ms. Wikane stated that she uses no chemicals. She stated that all of the shampoos, soaps, and conditioners have no soaps and no detergents in them. She stated that they do not dip dogs or cats anymore because of all the products - Frontline and pills - that can be acquired from the vet. She stated that her business will be a lot easier on the system than if you had a hair dressing business in your home.

Public Hearing closed.

DISCUSSION

1. APPEAL #892 CENTRAL HUDSON – VARIANCE

Board discussed the procedure for having the Board's attorney draft a resolution for this appeal. Mr. Vogt stated that the Board has up to 60 days to contact the Board's attorney to do a proper resolution. Board members agreed that they prefer to have a formal resolution to review prior to making a decision on this appeal.

Mr. Dunn asked for Board members thoughts on this appeal.

Ms. Rubenstein stated that, although she received the materials in advance, now that she has heard from the applicant and Ms. Horn, she would like to review these materials carefully. She noted that now she has a better understanding of what the issues are and that she is not suggesting that the ZBA redo the SEQRA review. She stated that she would like to make sure that she understands the issues. She noted that Central Hudson is saying that it is not required to provide the additional noise barrier for the existing transformer and that there was a lot of discussion about what the noise analysis actually said. She stated that now she would like to spend a little more time with the analysis. Mr. Vogt stated that this makes sense.

Ms. Czech stated that there were some points that were brought up on both sides and that she would like time, now, to read through the documents in reference to those specific points.

Mr. Vogt stated that because it is such a large application with many submitted documents it merits careful reading.

Ms. Rubenstein noted that she did not receive anything from the Planning Board regarding their process. Mr. Vogt stated that he attended some of their meetings.

Mr. Dunn noted that legally the ZBA has 60 days to render its decision and assured the applicant that it should be completed within 30 days. He reiterated that the Board would like

its attorney to draft a resolution and would also like to delve into the submitted materials a little deeper.

Ms. Van Tuyl stated that Central Hudson has absolutely no objection. She stated that the Board should feel comfortable that it has reviewed the record. She stated that she has submitted copies of every document that the Planning Board referred to. She offered to have copies made of these documents. She stated that there was a lot reviewed by the Planning Board and that the ZBA should be comfortable with its own review. She stated that if the ZBA requires an extension, they will grant it. She did emphasize that this is a very important project for Central Hudson and that they feel that delay at this point is creating real problems for the public.

Mr. Dunn offered that there would be a decision rendered at the ZBA's next meeting. He stated that he will contact the Board's attorney to draft a resolution and noted that the next meeting is scheduled for 2/28/08.

This application is adjourned to the February 2008 ZBA meeting. The Public Portion of this hearing is closed. Ms. Rubenstein underscored that the ZBA will not accept any additional written materials regarding this appeal, that the file is now closed.

2. APPEAL #916 WIKANE – DOGGIE DOO'S – SPECIAL USE PERMIT

Mr. Vogt mentioned the couple of issues that he has, which are the driveway issue and a business in a residential area. He stated that the driveway being so close to Mr. Mitchell's property is an issue, which has been a problem with the previous owners. Ms. Czech noted that the driveway has always been situated as it is now and that home occupations are allowed in the Code. Mr. Vogt noted that the applicant does not yet own the home. Ms. Czech stated that this home occupation is permitted, nonetheless.

Ms. Rubenstein stated that if the person who owns this property were a dentist they would not even need a special use permit.

Mr. Vogt stated that another issue is all of the opposition in a residential area, the safeguards for a residential neighborhood. He stated that he brings his animals to this applicant now at her present location. Ms. Czech asked what he means by safeguards. Mr. Vogt stated that he is concerned about safeguards per the strong opposition from the neighbors – that they feel that their neighborhood character is going to change. He noted that there was a home occupation already on the site. Ms. Rubenstein noted that it was an illegal use and that she can understand their concerns.

Ms. Rubenstein stated that she reviewed the Code and listened to the applicant and noted that the things that Ms. Wikane is proposing are not substantially different from the things that the Town permits in its Code. She offered as an example that a physician's office is permitted as a right without the need to appeal to the ZBA. She stated that traffic is a concern and that a physician would have many more than 7 clients per day so there would be many more than 14 car trips. And she noted that the Code allows a physician as a right. Therefore, she stated that the traffic is not substantially different from what the Code already permits as a right.

Ms. Rubenstein stated that Section 98-24, Home Occupation, lays out the permissions in this regard. She stated that professional offices, for instance the landscape architect, would be

permitted to have a home office without appealing for a permit. She noted that she had her professional office in her home and she did not need a permit. She stated that she did not have clients come to her house. Again, she noted that if the same location were a physician this Board would not even be discussing this.

Mr. Rubenstein also considered that the ZBA has permitted hair salons that have had many more than 7 customers per day and issues with chemicals. Therefore, she noted the fact that Ms. Wikane described that this is an interior use, that the dogs that are visiting are not going to be outside and will be confined. Ms. Czech noted that there are barriers that will prevent the dogs from running out the door even if they get out of their crates. Ms. Rubenstein stated that Ms. Wikane has gone to the Health Department regarding the septic issue, that they are telling her that she will have to make a modification but that the size of the septic system is adequate for this use.

Ms. Rubenstein stated that it seems that the issues that are of concern are more with regard to site plan and not zoning issues. She noted that Ms. Wikane will need to provide space for parking for the customers, which is something that she will have to address with the Planning Board. She stated that the ZBA would not deny a permit based on a parking issue. Further, she noted that the question of whether the driveway is adequate for 2 cars to pass each other is also a site plan issue.

Ms. Rubenstein stated again that the issues that are most prevalent with this appeal are site plan issues, not zoning issues. She stated that what the Town has permitted in the Code as appropriate home occupations do not appear to be substantially different from this application.

Ms. Czech stated that it was suggested that the ZBA would be setting a precedent. However, she stated that it would not be a precedent based on the Board's history of permitting hair salons, etc. She stated that in her opinion, therefore, it would not be setting a precedent.

Mr. Maucher stated that he has the same two concerns that Mr. Vogt mentioned. He stated that he would put greater emphasis on the neighbors' concerns. He stated that his personal approach to the Board is if there is little to no opposition to a change that seems reasonable, he is amenable to the application. However, he noted that when there is significant opposition from the neighbors, then he looks at the application more closely. He stated that the Board has received letters and personal testimony from people who seem to be very opposed to it. He noted that Mr. Mitchell, who spoke at this meeting, is basing a lot of his opinion on his experience with the previous occupant of that house and that he has experienced, first hand, what it is like to have people coming in and out of that driveway and is basically annoying. He stated that one of the purposes of the Town's Code is for everyone to enjoy their property not just the applicants.

Ms. Czech stated that she knows of the previous owner and hesitates to reach a decision on this application based on what transpired on the premises under the previous ownership. Mr. Maucher stated that the neighbor, Mr. Mitchell, had a similar experience with which he was unhappy. Ms. Rubenstein noted that it was an illegal use next door, with no conditions. She stated that a legal use that follows the rules set down, that is not the same experience. Mr. Maucher asked what would be different, other than the previous owner did not get a special use permit. Ms. Rubenstein stated that if he had come to the ZBA there would have been a site plan approval, which means that some of the issues that are annoying – particularly for

the Daleys with people driving on their property – would have been addressed. She stated that if there is a site plan that addresses how to prevent people from doing that, then that's what the Planning Board does – possibly making them put up a fence. She noted that there may have been things that the Planning Board could have done. Mr. Maucher asked if there is a site plan for this current appeal. Ms. Rubenstein explained that the ZBA will send it back to the Planning Board for site plan review. Mr. Maucher stated that the ZBA does not see that before it gives approval. Ms. Rubenstein stated that the ZBA does not always send appeals back to the Planning Board for review, but that in this case it is necessary.

In summary, Ms. Rubenstein pointed out that Mr. Maucher is saying that there was a home occupation next door and it was a bad experience for the neighbors. She pointed out that it was an illegal use and they did not have a site plan approval so that they weren't following anybody's rules. She stated that if the ZBA approves this appeal it would be a different experience because this applicant would be obligated to get a site plan approval, to make sure that the driveway is suitable for the proposed use, and to set it up so that people would not drive on someone's property. She stated that she's thinking that Mr. Mitchell's experience would not be duplicated with a legal approved use.

Ms. Czech stated that a lot of the issues that the neighbors had pertained to the previous owner's animals who frequently got loose. Mr. Maucher noted that the neighbor complained about the animals and the traffic. Ms. Rubenstein stated that one could have 7 dogs living next door and that they could be outside. However, in an effort to address objections to this application, Ms. Rubenstein pointed out that the applicant will not have dogs running loose.

Ms. Czech repeated that this is a zoning appeal and that the Board needs to focus on the question – can the ZBA grant a Special Use Permit based on the Code. She stated that she does not think the experience of the previous tenant is relevant. Mr. Maucher stated that he was focusing his opinion more on the letters that the Board received from the neighbors, who complained about the traffic as well.

Board members agreed that the traffic on Rossway Road is very heavy. Ms. Czech made the point that people who would bring their dogs to this applicant's location may already be traversing Rossway Road on their commute. Therefore, it may not be increasing the usage on their Rossway. Ms. Rubenstein stated that she did not think the concern was the traffic on Rossway, but rather were people driving up and down on the driveway. Mr. Maucher stated that mention was made of both, that people travel 60 mph on Rossway. Ms. Rubenstein stated that in her opinion the Rossway Road impact is very insignificant, but that she is sympathetic to the disturbance of people driving past your house on an adjacent driveway. Again, she noted that if there were a dentist or a doctor next door, which could happen without an appeal to the ZBA, there would be many more car trips up and down the driveway.

Mr. Maucher stated that is not what the Board is now being asked to address. Ms. Rubenstein explained that she's trying to compare it to the Town's philosophy and to its Code. She stated that the Code states that certain things are OK and asked what distinguishes a doctor or dentist from dog grooming. Ms. Czech asked what distinguishes a hair salon from dog grooming. Mr. Maucher stated that he thinks the Code requires the Board to evaluate each of those things on a case by case basis and referenced a previous appeal regarding tractor trailers delivering to a residence for a home decorating business. Ms. Rubenstein agreed and stated that she is trying to determine what the distinction is from

a philosophical point of view, and that she does not think there is much of one. Mr. Maucher asked if it would make any difference if there were 150 cars per day. Ms. Rubenstein stated that it would. Therefore, Mr. Maucher reasoned that that is why these applications come before the Board.

Ms. Czech noted that the driveways happen to be parallel with each other, but that there are separate driveways by different owners. She noted that by right a home business is allowed, via Special Use Permit, and people would go up and down that driveway that happens to be parallel to the neighbor's. She noted that they could have 10 friends over on a day and that would be disturbing to the neighbor as well. Ms. Rubenstein noted that that is not the question, but the issue is what the impact is. So, she stated that if the impact is that it is not significantly different than a person living next door, that is the question. Mr. Maucher stated that he does not have 7 to 10 cars coming to his house every day.

Ms. Rubenstein stated that she is looking at whether it is significantly different to have this use there as opposed to if she lived there and had 7 dogs and 7 friends visited every day. She stated that she does not think it is a significant difference as long as the issues raised in terms of the site plan are addressed.

Mr. Vogt stated that technically if you have more than 3 dogs it would be classified as a kennel. He read from the Code the definition of a kennel. Board members noted that one can have one's own personal dogs. Mr. Maucher explained that inside your house you can have your dogs, but outside your house you cannot build a structure. Ms. Rubenstein noted that Ms. Wikane's dogs will not be outside. Ms. Czech stated that the dogs do not stay over night, so that it is not a kennel and they are not being boarded.

Mr. Dunn stated that he is torn between what the Code permits and layouts and what he hears the neighbors say and when he tries to put himself in their shoes. He stated that you try to temper the legality with the personal feelings and think about in the summer time people will raise dust driving up and down that driveway. Ms. Rubenstein again noted that if the owner had seven visitors that would create dust.

Ms. Czech stated that the question isn't dust and isn't a computer business. Rather, she noted that the question is whether the ZBA will grant the Special Use Permit based on the Code. She stated that this business is not any different from a hair salon and there is less impact from having this use than there would be from a dentist or a doctor's office. Therefore, she stated that she does not think it is an issue with dust. She stated that she thinks that a lot of the questions have been answered by the applicant as far as chemicals and water and that she has met with the Department of Health. She stated that some of the issues are pertinent, such as the fence, but that with regard to the issues with the previous tenant, it is not known whether this will be the same experience. Therefore, she stated that she has experience with the prior tenant and, therefore, she understands the neighbors' concerns.

Ms. Rubenstein stated that it may turn out that the house will be improved. Mr. Dunn and Ms. Czech concurred.

Mr. Vogt read from Section 98-24(C)(1) of the Code regarding on premise activity. He noted that Ms. Wikane's testimony regarding her proposed use meets these guidelines.

Ms. Rubenstein asked Mr. Feldweg whether the applicant has been asked to read Section 98-24 regarding the limitations on home occupations. Mr. Feldweg stated that the office supplied Ms. Wikane with a copy of that Section. Ms. Rubenstein asked Ms. Wikane whether she has read the provisions of Section 98-24 on home occupations. Ms. Wikane responded that she has. Ms. Rubenstein asked if Ms. Wikane agrees to comply with these provisions. Ms. Wikane stated that she does.

Ms. Rubenstein discussed conditions to be placed with this Special Use Permit to include parking, traffic, fencing, letter from the Health Department regarding the adequacy of the septic system. Ms. Rubenstein stated that the ZBA cannot put a time limit on the Special Use Permit.

Ms. Rubenstein: **RESOLUTION FOR SPECIAL USE PERMIT** (original on file – document attached)

Resolution proposed by: _____ Lisa Rubenstein _____

Seconded by: _____ Ron Vogt _____

Vote taken and approved: _____ 4-1-0 _____

- Ms. Czech In favor
- Mr. Maucher Opposed
- Mr. Vogt In favor
- Ms. Rubenstein In favor
- Ms. Dunn In favor

Ms. Rubenstein advised the applicant not to offend her neighbors. Mr. Vogt noted that a Special Use Permit is revocable.

3. MINUTES

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

Meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the January 24, 2008, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS
February 28, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on February 28, 2008, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:36 p.m.

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

Members absent: Lisa Rubenstein

Also present: Ed Feldweg, Zoning Administrator

1. APPEAL #892 CENTRAL HUDSON – VARIANCE

Mr. Dunn mentioned that this appeal is a continuation from April 2007, that the public portion of that hearing has been closed, and that there is now a resolution offered by the ZBA counsel.

Mr. Vogt read into the record (original on file) the resolution to grant this area variance with the following conditions:

1. install a sound barrier around the existing transformer
2. install a sound barrier around the proposed new transformer

RESOLUTION SECONDED BY C. PERKINS

Discussion: Board members discussed the installation of the sound barrier around the existing transformer. Board members' sentiments in favor of requiring the installation of this sound barrier included:

- reasonable; timely; an improvement that will reduce the noise impact
- output and noise has increased over years and will continue to increase
- price is not significant
- small offset and a reasonable requirement to balance the large area variance
- screens an unsightly transformer substation
- enhances and improves the community and is part of a condition of life in Pleasant Valley

Board members' sentiments opposed to requiring the installation of this sound barrier included:

- not reasonable – neighbors have lived for 30 years with current noise level and did not object
- noise studies tested output at full load and found insignificant increase in noise compared to the ambient noise level
- 2nd transformer will lower the load and is needed

- a public utility is held to different standard
- barriers are unsightly and landscaping will screen

VOTE TAKEN AND APPROVED 5-2-0

Mr. Kish	In favor
Ms. Czech	In favor
Mr. Maucher	Opposed
Mr. Vogt	In favor
Ms. Perkins	In favor
Mr. Gerstner	In favor
Mr. Dunn	Opposed

Mr. Dunn summarized that the installation of a sound wall barrier around the existing transformer is the condition upon which the area variance is granted.

Ms. Van Tuyl thanked the ZBA for its time and its careful review of this application.

Mr. Dunn admonished Ms. Suzanne Horn, neighbor, that her recent letters sent to the ZBA Board members' homes were sent after the public portion of the hearing was closed and, therefore, constitute *ex parte* communications and had no bearing on the Board's decision. Further, he cautioned her that all communications must be notarized.

2. APPEAL #913 LUKAITIS – VARIANCE

Mr. Dunn mentioned that the public portion of this hearing is still open. He read from Mr. Lukaitis' written submission (original on file) in which Mr. Lukaitis explains his rationale for not moving the shed as requested by the ZBA.

Mr. Joe Lukaitis was present and was previously sworn in. He pointed out that the shed is currently located farther from the road than it originally was. He mentioned that this is a salvage shed that is usable, but that it probably would not survive another move. He stated that if he were to replace the shed, he would put it lower down on his property near the house.

Mr. Maucher asked how far the shed is now from the road. Mr. Lukaitis stated that it is now 51' from the center of the road.

No one from the public spoke with regard to this application. Public Hearing closed.

Discussion: Ms. Czech expressed her opinion this is not a significant variance and that the shed would not survive another move. She noted that the applicant has made a great deal of effort to locate it where it is now.

Mr. Dunn stated that he'd like to see a smaller variance or none at all but that he does not see that it is creating a problem for traffic or for neighbors. He stated that his personal feeling is that this is not a problem.

Ms. Perkins asked what exact size variance is being requested. Mr. Dunn stated that the applicant needs a 9' variance.

Mr. Gerstner and Mr. Vogt agreed that the applicant did the best that he could to honor the ZBA's previous request to get it as far off the road as possible.

Ms. Perkins read into the record the worksheet, noting that the requested variance is a 9' front setback, and stating that the benefit to the applicant is greater than any impact on the neighborhood.

Ms. Perkins: **MOTION TO GRANT THE VARIANCE; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 7-0-0**

3. APPEAL 917 HAHN - VARIANCE

Mr. Dunn announced that the applicant was denied a permit for a storage building for farm products applying to the provisions of 98-12(A), which requires a minimum front yard setback. He reported that the file also contains:

- Referral from the Pleasant Valley Planning Board: conditional positive recommendation
- Dutchess County Department of Planning: a matter of local concern
- Affidavit of publication in The Poughkeepsie Journal dated 2/25/08
- Comment form from the Fire Advisory Board: no fire or safety concerns
- List of adjacent property owners

Mr. Dunn reviewed the Planning Board's referral: conditional positive recommendation which states that the applicant should return to the Planning Board for site plan approval if the variance is granted. Further, the Planning Board motion to pass the appeal to the ZBA with a positive recommendation asks that the ZBA consider the following concerns in its review:

- That the property is in an agricultural district and the building is part of the ongoing farming operations
- Pay particular attention to public safety and welfare making sure that there is appropriate sight distance and visibility for people pulling in and out of the parking area
- Consider that it appears that there is adequate room on the property to move this building farther away from Salt Point Turnpike and consider this as one of the alternatives to reduce the amount of variance required

Mr. Thomas Hahn, 1331 Netherwood Road, Salt Point, NY 12578 was present and sworn in. Mr. Allan Rappleyea, attorney for the applicant, was also present.

Mr. Rappleyea reported that he went to the property today and noted that the farm has been in Mr. Hahn's family for 200 years. He stated that Mr. Hahn's mother passed away recently and that Mr. Hahn's intention is to keep the farm in the family. He stated that the purpose of the building in question is to exhibit the wares that are produced on the farm by Mr. Hahn and his wife.

Mr. Rappleyea stated that he pulled into and out of the parking area of the building in an effort to assess the sight lines on each side. He displayed photos of the site before the building was erected and of the site as it currently exists with the building in place. Mr. Rappleyea reported that there is not as much parking adjacent to the new building, that most of the parking is across the road. Mr. Hahn emphasized that the parking across the road is

mostly used by customers in the fall. Mr. Rappleyea explained that the site slopes down to a stream corridor and a fence. He stated that the building, itself, does not block the sight line. Rather, he pointed out some bushes and a knoll that may impede the sight line. Therefore, he stated that there is no difference in the sight conditions with the building there or not there because it is the bushes and the knoll that obstruct the vision. He pointed out the photos that verify this statement. He stated that an option is for Mr. Hahn to remove the bushes and level the knoll to remove any safety issues. He also pointed out a fence line along the edge of the property that could be moved back to the edge of the barn so that children and adults would be removed further from the road. He stated that these measures would improve the safety.

Mr. Rappleyea stated that on the other side of the structure the ground slopes down. He stated that if the barn were moved 20', it would be in the middle of the usable area where Mr. Hahn can exhibit his wares. He suggested that the barn is currently in the best location possible on the site.

Mr. Hahn explained that the bushes that obstruct the sight line are, in fact, a couple of old cedar trees and an old cherry tree.

Mr. Dunn stated that he has visited the site many times with his family. He stated that if there were two or three customers and cars on the site at a time, they would be pull in head first and, therefore, have to back out onto the road, which creates a major safety concern. He pointed out that there is a passing zone on the road in that area, which could create a situation where someone backing out intending to head west would never see a car in the passing lane. He stated that this potential situation seriously worries him at this site and, therefore, emphasized the desire to make some kind of improvement in that area. Mr. Rappleyea pointed out that that condition exists whether the building is there or not. Mr. Dunn stated that the passing zone in that immediate area is another encumbrance that could create a serious safety hazard for people going west bound.

Mr. Kish asked if there are any plans to have a larger parking area there. He stated that there is only adequate space for 3 cars in that vicinity and asked if there is an intention to create more of a parking lot as opposed to having people walk across the road. Mr. Hahn stated that the parking area across the road is considered the weekend parking area in October, which is when they have their biggest crowd. He stated that the vast majority of people park across the road. He stated that he's found it very difficult – that you can put up all sorts of signage and physical barriers but people will not respect signage. He stated that they have been there a long time and have never had anybody back out onto the road. He suggested that backing out onto the highway is not legal, even though people do it. He stated that for the most part, on weekdays or early on weekend days, the vast majority will park across the road.

Mr. Hahn expressed his apologies for not coming to the ZBA before erecting this building. He stated that he thought he was in an agricultural district, that he was doing the right thing. However, he stated that Mr. Feldweg, Zoning Administrator, came to the site and corrected him. He stated that he put the building in that location with a great deal of thought. He stated that they want people to be able to see the product that they have hanging on the building. He pointed out that if he were to move the building to the location the ZBA is suggesting, it would force the 3,000+ children, who visit the farm in the fall for the tours, closer to the road. He stated that he tries to have an employee to police the children and keep them away from the road. But, he stated that if he has to move the building back, then he has

to put his other stuff – the pumpkin display, wagon, a teepee, etc. – all has to come on the other side thus bringing the children closer to the road. He stated that the last thing he wants is an accident.

Mr. Rappleyea stated that the building was placed with safety in mind. Mr. Hahn concurred with that statement and mentioned that he pulls in and out of his driveway all the time. He stated that he moved the building thinking that he was doing something good to start with. He stated that the building is portable because, if he fails on the farm, the building is going to go up the road onto his farm where he lives with his son. He stated that he's trying hard to keep this a viable farm and keep it going. He stated that he sells a tremendous amount of beef, that he is the biggest beef producer directly to the consumer in Dutchess County. He stated that he also does pork and that they are adding poultry. He stated that he is trying to keep the business going year around. He stated that the vast majority of his business, the nucleus of it starts in October. He stated that he thought he was doing something good in erecting this building and that he still doesn't think he's doing something bad. He stated that a lot of thought went into it and that he does not think it is a hazard and noted that the cedar trees should have been out of there a long time ago.

Mr. Kish asked for clarification on how the land slopes. Mr. Rappleyea explained the photos and pointed out the area where in the fall Mr. Hahn has his livestock display. He stated that although it is not a drastic slope, there is not a lot of room and there is not 200' by any means.

Mr. Vogt stated that people want to park right in front of the farm stand which will create other obstructions, that people will cram closer to the road and that it is not a very big driveway. He stated that when he visited the site, he suggested that the building be moved back the equivalent of one section of the building (6' to 10'), which would provide a greater degree of safety for ingress and egress onto the NYS road. He explained that the ZBA is charged with granting the least variance possible. He stated that the building is close to the road and is a safety issue in his eyes. He pointed out that the cedars and the rising knoll impedes vision.

Mr. Rappleyea asked whether the safety concern is for cars or people. Mr. Vogt stated that it is both. Mr. Rappleyea suggested that Mr. Hahn could disallow people to park in that area. Mr. Vogt and Board members noted that people will not abide by the signage.

Ms. Czech noted that the building is not blocking the line of sight; rather it is the trees that block. She noted that the passing zone, the rising knoll, and trees have all been there as hazards and that the building has not impacted that safety issue. She stated that moving the fence back won't help but that repairing it may help to create a barrier for people. She asked about the feasibility of moving the building. Mr. Rappleyea and Mr. Hahn explained that it is portable.

Ms. Perkins asked about constructing more fencing to make it look less like a parking area in addition to signage and removing the trees. Mr. Hahn stated that they have actually added parking, which will be visible once the snow banks are gone. Ms. Perkins again asked about an option to reduce parking and make it less attractive for people to park. Mr. Hahn reiterated that in October the busses and the school groups and the nurseries park across the road, that he puts up the hay bales to create a walkway. Ms. Perkins suggested that he could

put up more fencing to make it look less like a parking area. Mr. Hahn stated that it's a viable option.

Mr. Dunn stated that in addition to traffic and the line of sight he is also bothered by the fact that the requested variance is over 53%, which is huge. Mr. Hahn acknowledged that fact and stated that he thought he was doing the right thing. He stated that he called NYS and that the State told him that what he proposed to do was OK and told him that he needed to be 25' away from the center road and suggested that he add 5'. Mr. Hahn stated that he added more than that and then Mr. Feldweg came and told him that NYS does not know what they are talking about. He stated that he's caught between a rock and a hard spot. He stated that he was told two different things and is left with a problem.

Mr. Maucher offered that possibly NYS does not know what each municipality's zoning requirements are. Mr. Vogt recalled that they made them move the posts for the signs for Salt Point. Mr. Rappleyea argued that he understands that it is a substantial variance but, balanced against the other factors, the nature of whether it is substantial or not is but one of several factors. He stated that balanced against the rest of the factors, he does not believe that it is an overwhelming factor. Mr. Maucher stated that the setback is the only factor in this case. Mr. Rappleyea stated that he is referring to the issue of whether it is substantial. He stated that the question of whether safety is comprised or not can be considered, he does not think that anyone in the community is arguing that this is a bad thing. He stated that on that point it balances in Mr. Hahn's favor.

Mr. Rappleyea stated that it is self-created, but that it was not maliciously self-created. He stated that Mr. Hahn is willing to do what he can to work with this site, but that not wanting to move it 10' or 6' is not arrived at without quite a bit of consideration by Mr. Hahn. He stated that it is not just obstinacy, but rather that it is a good spot for the building. He stated that he will take a look at the trees and if they obstruct. Mr. Gerstner noted that landscaping is not the purview of the ZBA – taking down trees, removing the fence, or increasing the parking lot has nothing to do with the ZBA. Mr. Rappleyea noted that the Board had mentioned conditioning the variance on the removal of trees or the fence. Mr. Dunn agreed and referenced the conditional variance granted to Central Hudson. Ms. Perkins stated that parking is the big issue and that, having been there many times, people will be backing out onto Salt Point rather than pulling out head first. She stated that she would feel better about this project if the parking were to be eliminated on that side. She stated that Mr. Hahn needs to take bigger steps to ensure safety.

Mr. Maucher stated that safety is one consideration among others. He considered options for rectifying the situation and that stated that there appears to be space for the building to be relocated so either the variance would not be required at all or at least be greatly reduced. Mr. Hahn stated that the problem with that is that everything has to go to the left of the building and it forces everybody closer to the road – all the little kids – which they were trying to avoid. Mr. Gerstner noted that a peak times they can put up the orange snow fencing and keep the kids off the road. He stated that he deals with this as he works for the railroad and must control people for a living. He stated that Mr. Hahn can keep people off the road if he has to. Mr. Hahn stated that he needs to get people across the road. Mr. Gerstner acknowledged that and stated that he can have people helping them to cross the road into his business. He noted that everybody on the Board has been to Mr. Hahn's property and that he has a beautiful set up, but that the building is too close to the road and there are alternatives and that the variance is too large.

Mr. Kish asked how far the building is to the fence. Mr. Hahn estimated that it is about 15'. Mr. Kish asked what the problem is with moving it 50' instead of 32'. Mr. Hahn stated that if he moved it that far, it places the building right in the center, the very heart of where they normally display their stuff. He stated that, therefore, it's got to go all the way over, closer to the pond, and move everything back over closer to the road, which is self-defeating. He stated in that instance they are not taking down the trees or removing the bank and are forcing everybody closer to the road. He stated that another problem is the people who come to cut their own trees aren't going to see that they have wreaths and swags on the building and offer cocoa in the building.

Mr. Vogt pointed out the green building to the right of the new building and suggested an option for relocation. Mr. Hahn stated that that is the food booth building. He stated that, now that his mother is gone, he will probably have to rent out that house and he must provide for a front lawn. Mr. Vogt and Mr. Hahn discussed options for moving the new barn.

Mr. Hahn stated that this was done for his meat sales and that today he must lock everything up. He stated that he is trying to understand the Board's concerns and noted that he has improved things, that he has made it better just where it sits. He stated that no matter where you park, the building is behind you no matter how you pull out of the area. He stated that if it were a sight line obstruction, he agreed with removing the cedars and the knoll. He stated that it does not gain anything by moving the building. He stated that he thought he had placed the building in the best place because of the safety issue. He referenced the fact that there have been teachers that they will not allow back on the farm because they do not control the children, which puts him in the position as the farmer of trying to control the kids. He stated that he has done this a long time and that he knows what works on his farm and what does not work.

Ms. Czech stated that the building does not block the sight line, it is the trees that block the view. She noted that the driveway is substantially wide enough for ingress and egress, that there is enough room. She stated that she is not sure that it is a safety issue, but rather it is too close to the road as far as the Zoning requirements are concerned. She stated that she does not agree that safety is an issue. She stated that Mr. Hahn has had the big business in the fall, that that has not changed, that people will still be walking in the road and that it has nothing to do with the variance requested. She stated that the ZBA cannot control his business or how people behave during that time. She stated that it has nothing to do with what the ZBA's charge is and is not relevant to the variance. She stated that the Board's concern is how big a variance the Board is willing to grant and whether it is feasible to move the building. She summarized that it is not so much of a safety issue as it is an issue of the variance.

Mr. Dunn stated that he would like to see a variance of less than 50% and noted that now it is 53%. He stated that if Mr. Hahn moved the building back 10', that would resolve that. He stated that it would be nice if the cedars were removed to improve sight distance. He expressed his concern about granting such a large variance and suggested that a happy medium can be found. Ms. Czech agreed with this option and suggested that it would provide room for Mr. Hahn to gate the area and provide greater safety for the children. Mr. Gerstner agreed.

Mr. Rappleyea asked if a site visit by the Board would be helpful. Mr. Dunn stated that it is a practice of the Board to do site visits. All Board members stated that they have been to the site.

Ms. Perkins asked how the Board members feel about 10' and removing the cedar trees, which would be less than the 50% variance. Mr. Vogt concurred with this suggestion.

Mr. Rappleyea advised that Mr. Hahn should take time to consider these suggestions and asked for an adjournment. Board members discussed optional conditions for the variance.

Mr. Hahn stated that the Board has been amiable, that there has been good discussion and thoughts. He stated that they have brought up good points, but requested time to consider his options and asked for an adjournment. Mr. Dunn stated that the public portion of the hearing will remain open and asked that Mr. Hahn notify the office in the event that he chooses not to come to the March meeting. Mr. Dunn informally polled the Board on moving the building a minimum of 8' and removing the trees. Mr. Maucher noted that Mr. Hahn must amend his application.

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

4. MINUTES

Mr. Vogt: **MOTION TO APPROVE ZBA MINUTES OF JANUARY 2008 MEETING WITH NO CHANGES; SECONDED BY MR. MAUCHER; VOTE TAKEN AND APPROVED 4-0-0.**

Meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the February 28, 2008, 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 27, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on March 27, 2008, 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, Chair
 Lisa Rubenstein
 Bob Maucher
 Tim Gerstner
 Helene Czech
 Steve Kish, Alternate

Members absent: Ronald Vogt
 Christina Perkins

Also present: Ed Feldweg, Zoning Administrator

1. APPEAL #917 HAHN – VARIANCE

Mr. Dunn announced that the NYS Agricultural laws supercede Town Zoning except for matters of safety. Therefore, he noted that Pleasant Valley cannot impose upon Mr. Hahn with the exception of issues that impede safety.

Mr. Thomas Hahn was present and was previously sworn in.

Mr. Dunn asked Mr. Hahn if he still intends to remove the bushes that are in the line of sight. Mr. Hahn responded yes.

Mr. Hahn stated that they have moved the building 8' per the ZBA's suggestion and in the spirit of cooperation. Mr. Hahn stated that he intends to take the bushes out and sheer the bank down to make the sight distance even better. Mr. Dunn expressed the Board's appreciation to Mr. Hahn for taking these measures.

Mr. Dunn stated that the proper thing to do is to dismiss this appeal. Mr. Feldweg suggested that the motion to dismiss should include the fact that the building was moved and that there was some work done that met the Board's concerns to increase the sight distance.

Mr. Dunn: **MOTION TO DISMISS THIS APPEAL DUE TO THE FACT THAT THE NYS AGRICULTURE AND MARKETS LAW SUPERCEDE LOCAL TOWN ZONING CODE AND WITH SPECIAL NOTE OF THE FOLLOWING:**

- 1. Mr. Hahn has moved the building 8'**
- 2. Mr. Hahn is removing the bushes and leveling a bank to improve the sight distance**

SECONDED BY T. GERSTNER

VOTE TAKEN AND APPROVED 6-0-0

2. MINUTES

Mr. Gerstner: **MOTION TO ACCEPT, AS CORRECTED, THE MINUTES OF THE ZBA MEETING IN FEBRUARY 2008; SECONDED BY B. MAUCHER; VOTE TAKEN AND APPROVED 6-0-0**

Meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the March 27, 2008, 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 24, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on April 24, 2008, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:37 p.m.

Members present: John Dunn, Chair
 Lisa Rubenstein
 Bob Maucher
 Tim Gerstner
 Helene Czech
 Ronald Vogt
 Christina Perkins
 Steve Kish, Alternate

Also present: Ed Feldweg, Zoning Administrator

1. **APPEAL #918 JOYCE – VARIANCE**

Mr. Dunn stated that this is an application for a 15' variance from road frontage requirement. The applicant has only 35' road frontage and the code requires 50'. He noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 4/18/08
- Owners consent note on a subdivision
- Property maps
- Administrative decision rendered by the Zoning Administrator denying the application due to inadequate road frontage

Mr. Dunn took note that the file does not contain proof that the adjacent land owners were notified of this hearing. Mr. Feldweg stated that this was done but that new staff in the Zoning Office did not include this material in the file. He also noted that this application was not reviewed by the Planning Board and that he talked with the Planning Board chair. He stated that if the applicant is granted the variance tonight, he will then appear before the Planning Board for a wetlands permit.

Thus, Mr. Dunn, noted that the file does not contain a recommendation from the Planning Board or from the Fire Advisory Board. Ms. Rubenstein asked for proof that the adjoining property owners were notified. She stated that before the ZBA can make a determination on this application, it must be confirmed that this mailing was done. Mr. Dunn concurred with this statement. Mr. Feldweg stated that he will make sure that the appropriate documentation is included in the file.

Jeremy and Vanessa Joyce, 100 Fox Hollow Road, Rhinebeck, NY were present. Mr. Joyce was sworn in. He stated that he is trying to purchase the property and is in contract with the current owner. He stated that he needs this variance in order to build the driveway to the approved building lot at the back of the property. He stated that the building lot is Board of Health approved. He stated that he's aware of a 20' drainage easement and that a minimum for a driveway is 12'. He stated that he has talked with Mr. Gardner of the Highway

Department and has shown him the map and that he has seen no problem. He stated that Dick Barger, engineer, has reviewed the site and also sees no problem.

Ms. Rubenstein raised the question of when the lot was created. She noted that the application states that it was created in 1972 and asked whether there is confirmation on file of this date. She stated that 1972 pre-dates the Zoning Code. She stated that it is crucial to have legal documentation of the date the lot was created. She noted that the ZBA has approved lots that pre-exist Zoning and have less than the required road frontage. She suggested that if the lot were created after Zoning went into effect, the ZBA might not consider the application. Mr. Vogt concurred with this request for documentation.

Mr. Joyce provided to the ZBA copies of the deeds in his possession. Board members reviewed the documents, but clarification of the date was not apparent from these documents. One of the documents is a conveyance dated 1974. Also there is a document conveying "a portion of the premises by Kenneth E. Brown to Malin Real Estate, Inc. by deed dated 1/10/73." Mr. Vogt asked if this refers to the subdivided piece. Ms. Rubenstein stated that the documents provided do not clarify that point.

Mr. Joyce stated that the current owner is Donald Havis. Ms. Rubenstein stated that the ZBA needs to see title documents on this piece of property that indicate that it was legally created and when it was subdivided. She stated that the ZBA cannot consider this application without knowing if this property was a legal lot prior to the Zoning Code. She advised the applicant that if this is a legal building lot that predates Zoning, then the applicant and the Board are faced with a different set of circumstances.

Ms. Rubenstein stated that Mr. Joyce needs to establish for the ZBA that he has a legal building lot that pre-exists Zoning. She stated that he may have to ask Mr. Havis' title company to trace the title back to show that it is a legal building lot. Mr. Joyce asked what documents the Board needs. Ms. Rubenstein suggested that the current owner should have a title report on the property and noted that everything is available at the County Clerk's office.

Mr. Dunn advised the applicant that the title report in itself is no guarantee that this application will be approved, but it is the first step. He stated that, if the property pre-dates Zoning, the ZBA's view of it would be different.

Public hearing was opened and adjourned to a subsequent ZBA meeting.

Mr. Joyce asked what else the ZBA needs. Mr. Dunn pointed out a concern for the sight distance on the road at the proposed location of the driveway. Mr. Joyce stated that he would have to put up a guardrail into the driveway, which will be determined by the Highway Department. Mr. Dunn asked Mr. Joyce to return to the ZBA with proof as to when that specific lot was created.

Ms. Rubenstein also pointed out the problem with the wetlands on the property. Mr. Joyce reported that he has previously dealt with the DEC with regard to projects associated with his property maintenance job. Mr. Vogt pointed out that the wetlands will be the concern of the Planning Board, not the ZBA. Mr. Dunn stated that the ZBA's authority is only concerned with the 15' variance.

2. MINUTES

Ms. Czech: **MOTION TO APPROVE THE MINUTES, AS WRITTEN, OF THE ZBA MARCH 2008 MEETING; SECONDED BY L. RUBENSTEIN; VOTE TAKEN AND APPROVED 6-0-0.**

Meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the April 24, 2008, 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 26, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on June 26, 2008, 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
 Lisa Rubenstein
 Bob Maucher
 Tim Gerstner
 Helene Czech
 Ronald Vogt
 Christina Perkins
 Steve Kish, Alternate

Also present: Ed Feldweg, Zoning Administrator

1. **APPEAL #919 – POEPPLEIN – VARIANCE**

Mr. Dunn reported that Zoning Officer denied a building permit due to the fact that the proposed deck would be 8' from the property line when the zoning requirement calls for a 15' setback. He noted that that file contains:

- Referral from the Dutchess County Department of Planning and Development: no opinion – a matter of local concern
- Referral from the Pleasant Valley Planning Board: positive recommendation
- FAB referral: no position
- List of adjacent property owners who have been notified of this hearing
- Affidavit of publication in The Poughkeepsie Journal dated 6/18/08

Ms. Gail Magioncalda, 548 North Avenue, Pleasant Valley, NY, was present and was sworn in.

Mr. Dunn asked if the proposed deck will be the same height as the original deck. Ms. Magioncalda responded that it will be the same height and that it will wrap around to accommodate her mother who cannot go down the steps. Mr. Dunn asked how far from the proposed deck the neighbor's house would be. Ms. Magioncalda estimated that it would be more than 100'.

Public Hearing open.

Ms. Paula Cousins, 560 North Avenue, Pleasant Valley, NY, was present and was sworn in. She stated that she and her husband are opposed to the Town granting this variance. She read from a written document (ORIGINAL ON FILE) that lists a number of reasons for their opposition. These reasons include:

- Conflict with the applicants over the accuracy of the survey and the location of property lines
- Personal property, garbage and pet waste dumped onto Ms. Cousins property
- Invasion of privacy
- Installation of a power line crossing Ms. Cousins property

- Police intervention to remove wood stacked up against Ms. Cousins' fence that was impacting the fence structure
- Ms. Cousins' engaged the services of an attorney in response to the property line dispute and the damage to her fence

Ms. Cousins stated that she and her husband are adamantly opposed to the Town permitting the applicants to build any structure that is closer to property line than is permitted by the zoning code. She stated that her privacy and her enjoyment of her own property will be reduced if this variance is granted and if the applicants are permitted to build closer to the property line. Further, she stated that additional damage to her property will be encouraged if this variance is granted.

Ms. Cousins emphasized that it is very difficult to experience any privacy in her own backyard due to the ongoing conflicts with the applicants. She stated that she has a dog and that she does not feel comfortable whenever she is out there with her dog. She stated that she would have no problem if the applicant wanted to build onto the other side of their property and away from her property. She stated that it would be best for them to stay as far away from each other as possible and strongly asked the ZBA to consider her concerns. She provided the ZBA with documentation of these events.

Mr. Dunn asked about the fence and how close it was built to the property line. Ms. Cousins stated that they built it according to the Pleasant Valley regulations, approximately 1/4" from the line. Mr. Dunn asked if she is sure that the fence is located within her property. Ms. Cousins stated that she is 100% positive of that.

Mr. Dunn asked for more information about the illegal Central Hudson power line. Ms. Cousins stated that while walking her dog she noted an overhead wire that had not been there before. She stated that she called Central Hudson and that Central Hudson stated that they had no record of that wire. She stated that she found out that the applicants installed the wire, had hired a contractor, and hooked into the power pole.

Mr. William Cousins, 560 North Avenue, Pleasant Valley, NY was present and was sworn in. Mr. Cousins stated that during the neighbor's renovation there was no wire out there, that it was not crossing his property line. He stated that he noticed that at some time the neighbor installed a new service connected to their garage, at which point the wire was draped way across his property and very low to the ground. He stated that at that point his wife contacted Central Hudson and they addressed the issue. Mr. Maucher asked if the wire went from the neighbor's house to the telephone pole. Mr. Cousins responded yes.

Ms. Cousins explained that her lot is an odd shape and explained where the pole is located. She mentioned that the neighbor's behavior showed no respect for her and her husband, that the neighbor did not communicate with her about the installation of the wire. She stated that the neighbor has no consideration for anybody but themselves. She stated that her privacy and her personal property is very important and emphasized that she does not think the neighbors should have the right to build any closer to her property. She stated that if the neighbors are granted the variance and given permission to build, she anticipates that the construction debris will be on top of her fence. She stated that if this happens and she calls the neighbor, she'll be told that it is a neighbor dispute and the police will say that it's a civil

matter. She stated that she and her husband are stuck in the middle now and asked what they should do.

Ms. Cousins stated that the real deal breaker is that whenever she walks her dog, the neighbor comes out on their deck and gawk at her. She stated that they do this on purpose to try to intimidate her. She stated that this behavior is very immature, that she has called the NYS police about it, and that her attorney is aware of it.

Mr. Dunn thanked Ms. Cousins for her testimony. Ms. Cousins reiterated that the privacy issue is the priority. She stated that if the ZBA gives them a bigger deck, it gives the neighbors more of a forum to be immature.

Mr. Dunn asked if the deck were lower, would it make a difference. Mr. Cousins stated that it would not make any difference and that the 15' setback needs to be observed. Ms. Cousins stated that they respectfully request that this variance not be granted and that they have no problem with them building on the other side. She stated that they have room on the other side and that she does not understand the need for the neighbor to build out onto their side of the property. She stated that she is adamant about the fact that it will take away from the enjoyment of her property and that as a tax payer in the Town of Pleasant Valley that she enjoys living here and tries to be a part of the community.

Board member asked how the issue with the illegal wire was resolved. She stated that she was able to get Central Hudson to put the pole at the end of the property.

Ms. Czech asked for clarification on the variance requested. It is an 8' variance on the right.

Mr. Matthew C. Smith, 540 North Avenue, Pleasant Valley, NY, was present and was sworn in. Mr. Smith stated that he's been a resident of Pleasant Valley for over 40 years. He stated that he knows that neighbors have problems but that he's never seen a conflict such as this one. He stated that it is promulgated by nothing but sheer selfishness. He stated that they had a nice little community there, what they used to call Hurley Corners and that nice people lived there. He stated that some nice people still do, and that others build walls and make accusations and harass their neighbors, call the sheriff's department and the NYS police. He stated that he lives close to the applicant's house, closer than anybody. He stated that if anybody has a complaint, it is him. He stated that these people took what was an abandoned, foreclosed shack and built it into a nice structure, something that this Town can be proud of. He stated that he's absolutely amazed at the lack of neighborliness of late in his little corner of Pleasant Valley.

Mr. Dunn asked Mr. Smith if it would give him enough room if the applicants were to build the deck on the side of their property toward Mr. Smith's yard. Mr. Smith said yes and no.

Mr. Maucher asked Mr. Smith if he is opposed to the deck. Mr. Smith said they can go ahead with it.

Ms. Magioncalda explained that the reason they chose that side of the house for the proposed deck extension is because they built the addition on and they have plans to expand their kitchen. With regard to Central Hudson and the power lines, she stated that when they built the house there was an existing wire from the front of their garage to their post. She stated that the wire was always there from when the house was built. She referred Board members

to Central Hudson for confirmation of this information. She stated that when they redid the whole house they put the connection from the front of the garage to the side of the garage. She stated that the neighbors complained and Central Hudson could not find the old right-of-way. Therefore, she stated that Central Hudson resolved the issue by putting up a new pole.

With regard to the issue of the property line and the survey stakes, Ms. Magioncalda stated that the survey stake was in the middle of her lawn. She stated that she called them and moved the stake to the property line, which is where it is now.

With regard to the police, Ms. Magioncalda stated that it has been an ongoing thing since the neighbor has been there. She stated that she has dealt with a NYS Trooper with regard to the wood. She stated that the wood was touching the fence but was not leaning against the fence. She stated that she had checked it with the kids and they said it was not damaging the fence. She stated that the neighbor claimed to find some damage. Ms. Magioncalda stated that she also has dealt with an officer from the Sheriff's department. She stated that she has taken pictures of her neighbor, as advised by the police and by the officers, to show how close the neighbor is to the fence line. She stated that the neighbor deliberately walks her dog close to the property line, which makes her dog start barking, and then the neighbor complains about the noise her dog makes, which was instigated by the neighbor.

Ms. Rubenstein asked Ms. Magioncalda whether she has considered building the deck extension so that she does not need a variance - make it a little bit narrower which would not require a variance at all. Ms. Czech pointed out that it would match the width of the existing deck and would still create a wraparound effect. Ms. Magioncalda and Board members discussed design options for the deck that would avoid the need for a variance at all or reduce the size of the variance required. Ms. Rubenstein pointed out that this would be a compromise and that if a variance is still required, then the Board would have to make a decision on the application.

Ms. Magioncalda pointed out that the fence is on the property line in some areas and off the line in other areas. Ms. Rubenstein stated that the ZBA is not in a position to make a decision about whose survey is accurate.

Ms. Magioncalda stated that she's willing to consider a redesign of the proposed deck.

Mr. Maucher asked for clarification of some of the existing features on the lot. He and Ms. Magioncalda reviewed the drawings. Board members discussed options for redesigning the deck.

Mr. Vogt advised Ms. Magioncalda to remeasure so that the ZBA will have the exact information and know exactly what is being requested. He noted that it is an odd shaped piece of property which makes the measurements challenging. Mr. Vogt stated that he would like to take the measurements and stated that he would measure the back end of the existing patio to determine the exact variance that would be required. Ms. Rubenstein concurred and stated that if the ZBA issues a variance the applicant would want the Board to be precise.

Mr. Vogt invited Mr. Feldweg, Zoning Administrator, to accompany him to take the measurements. Mr. Feldweg stated that because of the existing issues he thinks that before a building permit is issued or a variance is granted the property line will definitely have to be located. He stated that the applicant must locate the property line before a building permit is

granted. He stated that whatever variance the Board can verify prior to issuing a building permit, the Town does not want this to come back as being a problem in the future. Mr. Dunn stated that Mr. and Mrs. Cousins have testified that the fence is ¼" off the property line. Mr. Feldweg stated that if there is some documentation to confirm that information, then the Zoning Office will go from there.

Ms. Rubenstein: **MOTION TO ADJOURN THIS APPLICATION; SECONDED BY MS. PERKINS**

Discussion: Mr. Dunn stated that the Public Portion of this hearing will remain open.

VOTE TAKEN AND APPROVED 7-0-0

Mr. Dunn stated that this hearing is closed for now and will reopen next month.

Meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the June 26, 2008, 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 24, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on July 24, 2008, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:34 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Tim Gerstner
 Ronald Vogt

Members absent: Lisa Rubenstein
 Christina Perkins
 Helene Czech
 Steve Kish, Alternate

Also present: Ed Feldweg, Zoning Administrator

ANNOUNCEMENT: Mr. Dunn explained to the applicants that since there are only 4 members of the Zoning Board present at this evening's meeting, a vote on their application will have to be passed unanimously. He further explained that, by law, applications must receive a majority vote from the ZBA: the ZBA has 7 Board members, therefore, an application must receive 4 yes votes to be approved. Mr. Dunn offered the applicants the option of postponing their hearing to the next ZBA meeting, where there will probably be more Board members present. Neither of the applicants on the agenda opted to postpone their application to next month.

1. **APPEAL #919 – POEPPLEIN – VARIANCE**

Mr. Dunn announced that the Public portion of this hearing, which was adjourned from last month, remains open. He stated that the application has been amended by the applicant and that the maximum variance now being requested is 3'6".

Mr. Vogt explained that the 3'6" variance is at the closest point to the garage and that it diminishes to a zero variance. He stated that he took the measurements when he did a site visit. Specifically, he reported that he measured coming from the garage heading toward the back of the house:

- At the garage point, they need a 3'6" variance
- At 15' mark, they need 1'2" variance
- At the 29' mark, they need no variance
- And from 29' to 37', they need no variance

Mr. Dunn asked if the applicants wished to speak and add anything to their testimony. The applicants declined to speak.

Public Portion of hearing closed.

Discussion: Mr. Vogt noted that the applicants have amended their application and now require a small variance. He stated that this is a positive change and that he has no issues

with the application. Mr. Maucher and Mr. Gerstner stated that they had nothing to add to the discussion.

Mr. Dunn read the worksheet into the record (ORIGINAL ON FILE).

- Area variance – 3’6” variance on the left
- Benefit to the applicant is greater than the detriment to the neighborhood

Mr. Dunn: **MOTION TO GRANT THE VARIANCE; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 4-0-0**

2. APPEAL #920 RIDGES AT PLEASANT POINTE – VARIANCE

Mr. David Przetak was present and was sworn in.

Board members and Mr. Przetak discussed the inaccuracies on the map with regard to the address. Mr. Przetak explained that the correct address is 27 Shagbark Avenue.

Mr. Dunn noted that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 7/17/08
- Referral from Fire Advisory Board: no position as there are no fire or safety issues
- Comment letter from the Dutchess County Department of Planning: a matter of local concern
- Referral from Planning Board: positive recommendation
- List of adjacent neighbors who were notified of this hearing

Mr. Przetak explained that the home on this site is dilapidated and that he wishes to replace it with a new mobile home that measures 16’ x 68’. He explained that the application includes variances for a proposed deck and a proposed shed on the site. He explained the details on the site, the lot measurements, and his plans for locating the home on the site.

Mr. Gerstner asked for clarification on the proposed deck and shed. Mr. Przetak explained that he has included the variances required for the deck and the shed in the event that residents in the home may ask for a deck and/or a shed. He explained that including the variances for the proposed deck and shed, now, provides greater control on the site and stated that he tries to show the Board what the site will ultimately look like.

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

Discussion: Mr. Maucher stated that he has nothing to add to the discussion. Mr. Vogt explained that he has seen the site.

Mr. Vogt read the worksheet into the record (ORIGINAL ON FILE):

- Trailer variances: 20’ front; 0’ rear; 11’ left; 0’ right
- Deck variance: 5’ front; 0’ rear; 0’ left; 0’ right
- Shed variance: 12’ right; 12’ rear; 0’ front; 0’ left
- Benefit to the applicant is greater than the detriment to the neighborhood

Mr. Vogt: **MOTION TO GRANT THE VARIANCES; SECONDED BY J. DUNN; VOTE TAKEN AND APPROVED 4-0-0**

3. MINUTES

Mr. Dunn: **MOTION TO APPROVE THE MINUTES OF THE APRIL 2008 ZBA AS CORRECTED; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 4-0-0**

Mr. Dunn: **MOTION TO APPROVE THE MINUTES OF THE JUNE 2008 ZBA AS CORRECTED; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 4-0-0**

Meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the July 24, 2008, 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 25, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on September 25, 2008, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:39 p.m.

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

Also present: Ed Feldweg, Zoning Administrator
 Steve Kish, Alternate

1. **APPEAL #921 – FRANK – AREA VARIANCE**

Mr. Dunn stated that this appeal was adjourned from the August 2008 ZBA meeting by request of the applicant. Mr. Dunn explained that the full Board was not present in August and, therefore, he gave applicants at that meeting the option of adjourning their applications till the next Board meeting in hopes that more Board members would be present. Thus, Mr. Frank's appeal is on tonight's agenda.

Mr. Dunn noted that this is an appeal for an area variance and is located at 453 Creek Road. He stated that the application is for the construction of a shed that will be 3' from the property line, and the concrete pad for the shed will be 2' from the property line. He noted that the required setback is 15'.

Mr. Leonard Frank was present and was sworn in at last month's meeting. Mr. Fred Schaeffer, attorney for Mr. Frank was present.

Mr. Schaeffer submitted an affidavit from Mr. Frank's immediate neighbor on the south, Ms. Billie Vleming, which is notarized, and in which Ms. Vleming expressed her support of Mr. Frank's appeal.

Mr. Schaeffer presented the rationale for granting this variance. He addressed the 5 factors that the ZBA may consider in determining whether the benefit to the applicant is greater than the potential detriment to the neighborhood or community if such variance were granted.

With regard to the first factor – no undesirable change to the character of the neighborhood nor any detriment to nearby properties – Mr. Schaeffer stated that there will be no detriment to nearby properties. Further, he stated that the shed will be setback 400' or 500' from the road and explained that this piece of property is on the low side of Creek Road. He stated that there are a lot of trees, that the driveway goes down a fairly steep grade, and then there's a level area and then the house. He explained that the house sits across the back of the property and then there's another drop that goes down to the creek. He stated that the area behind the house is in the flood zone. He stated that the area in front of the house has a

turnaround in the drive. He stated that there is very little room on either side of the house. He explained that where the driveway is located is at the base of the hill going down from Creek Road and is often damp and wet in that area and it is the only cleared area on the property. He stated that if Mr. Frank were to put the shed in front of the house, which is the only area he could put the shed and meet the setback requirements, it would be an ugly situation. He explained that this is why the neighbor, Ms. Vleming, stated in her affidavit that she would rather see it located at the side of Mr. Frank's house rather than in front of it because it adds symmetry to the land and makes it visually much nicer. He stated that you really cannot even see where the shed is located into the woods on the side by the property line; that it would be barely visible from the road at all and from any other neighbors. He stated that Ms. Vleming is on the south side where the shed would be and she would be the only neighbor who would be impacted. He underscored that Ms. Vleming is very adamant in saying that there's no adverse impact on her. ZBA members pointed out that they have received a copy of Ms. Vleming's notarized affidavit. Mr. Schaeffer read from Ms. Vleming's affidavit (ORIGINAL ON FILE).

Mr. Schaeffer stated that the basic rule is to preserve the neighborhood and to protect the property values. He stated that the crux of their position is stated clearly in Ms. Vleming's affidavit when she says that "the location of the new building close to my property would be better than putting it in front of the house which would look ugly and out of place. I would rather see the new building to the side of their house than in front of their house where it fits in better with the landscape." Mr. Schaeffer stated that there is no way that this shed located to the side of Mr. Frank's house will affect the property values and will look a lot better than if it were located anywhere else.

With regard to the second determining factor – that the benefit cannot be achieved by any feasible method which would not require an area variance – Mr. Schaeffer stated that this is true due to the topography of the property. He explained that the front of the property slopes down quite a bit and the back is in a flood zone and to put it in front of the house would not create a nice visual appearance.

With regard to the third determining factor – whether the requested variance is substantial – Mr. Schaeffer stated that at first glance a 12' variance in a 15' setback requirement would appear to be substantial. However, Mr. Schaeffer argued that the meaning of substantial is the overall impact of the project and not just the setback requirement. Mr. Schaeffer read some commentary from other decisions:

- "the overall effect of the granting of relief is the relevant inquiry"
- "the more logical approach is to consider the effect of the deviation and the circumstances as a whole"

Mr. Schaeffer explained these commentaries to indicate that if Mr. Frank were putting in a 200' large garage on his property that would be a substantial variance. However, he explained that Mr. Frank is putting in a 22' shed which is an insignificant variance for a small shed.

With regard to the fourth determining factor – adverse effect on the physical or environmental conditions in the neighborhood – Mr. Schaeffer stated that they come back to the same arguments used before. He stated that the shed is virtually invisible, is totally hidden from view from the road and by neighbors by location and topography and the woods

around it. He stated that the shed would be more visible and look terrible in front of the house instead of tucked in the woods.

With regard to the fifth determining factor – self-created hardship – Mr. Schaeffer stated that the tax map of the area shows that all the lots are long and narrow. He stated that the house was built on the property across the width of the lot and was located that way due to the topography, the hills, and the zoning plan. He stated that it is an inadvertent situation that is caused by the dimensions of the lots, which are long and narrow and go to the creek and are almost 2 acres. He stated that the overall addition of the shed is insignificant compared to the size of the lot and makes sense in regard to the topography and the layout of the lot. He stated that putting the shed on the side will improve the value of the lot and will be a big benefit to Mr. Frank as a storage space. Further, he explained that he cannot put the shed closer to the house because it would block access to the back of the house and the back of the lot. He stated that he cannot locate the shed 15' from the property line on the side because he would not be able to get to the area behind the house.

Mr. Schaeffer stated that, in conclusion, he was surprised when Mr. Frank came to him and explained that there was a problem with this variance. He explained that he was chair of the ZBA for 7 years in the 1980's and back then there was a higher standard – there had to be a hardship to get a variance. He stated that that standard has been relaxed greatly and now it is just whether it will adversely affect the neighborhood. He stated that if you look at the property and think about what Mr. Frank is doing, there is no way that this is going to have an adverse impact on the neighborhood, which he stated is the overriding concern for the ZBA. He stated that it is not whether the Board likes it or thinks it's a good idea, but rather whether or not this will have an impact on the neighbors, the community, and the neighborhood, and whether or not it will be a benefit to Mr. Frank. He stated that it will be a benefit and expressed his hope that the Board will consider it favorably.

Ms. Rubenstein asked what the dimensions of the shed will be. Mr. Frank responded 16' x 20'. Mr. Schaeffer stated that it is very small which supports the interpretation that it is not a substantial variance.

Mr. Frank explained that originally he thought he would need a cement foundation for the shed. However, he learned that the presence of a lot of tree roots in the area would damage a concrete pad over time. Therefore, he explained that he's planning to use regular footing foundation. He stated that the pad would have been 2' from the property line; but that now that he is not going to have the pad, the shed will be 3' from the property line. Mr. Frank stated that he put some lines down so that anyone coming to the site could easily see the proposed location of the shed. He also explained that the problem would be exactly the same if he were to put the shed on the other side of the house. He stated that he does not have enough room on either side of the house to locate the shed without asking for a variance.

Mr. Vogt asked what the distance is from the front of the proposed shed to the turnaround driveway. Mr. Frank stated that it is about 10' and that there are some trees there and some shrubs. Mr. Vogt stated that there are other options and that Mr. Frank could move the shed a little. Mr. Frank explained that if they move the shed farther off the property line, it narrows the space between the shed and the house thus reducing access for lawn mowing equipment to the back of the house. He stated that that is the main access to the back of the property.

Mr. Vogt asked what the distance is from the front corner of the proposed shed to the house. Mr. Frank stated that he has not measured it, but guessed that it is probably about 10'. He stated that there is a walkway and a garden in that area.

Mr. Vogt explained that the ZBA is charged with granting the least variance possible under the circumstances. Mr. Schaeffer stated that the Board does not have to do that, that the Board can look at the overall picture. Mr. Vogt stated that it is the Board's task to grant the least variance in a reasonable request. Mr. Dunn concurred. Mr. Schaeffer stated that there is leeway on it and that symmetry makes a big difference when looking at a house. Mr. Vogt stated that moving it even 5' closer to the driveway would not change the visual impact that greatly and that there is about that much room by the trees.

Mr. Frank stated that his wife reminded him that right in that area there is a well head above the ground that is camouflaged by a fake rock. Mr. Vogt stated that he did not see it. Mr. Frank stated that he would not have seen it because it is covered by the fake rock. Ms. Rubenstein asked Mr. Frank to point this out on the map. Mr. Frank pointed it out for the Board's view. Mr. Maucher and Mr. Vogt both agreed that they would like to make a site visit to see the area and the well head.

Public hearing was opened. No one spoke.

Mr. Dunn asked the Board members if they want to make a site visit. Mr. Maucher and Mr. Vogt stated yes. Ms. Perkins stated that the variance requested is substantial. Ms. Rubenstein asked to postpone these comments to the discussion and suggested that Mr. Dunn close the public hearing.

Public hearing was closed.

2. APPEAL #923 – USE VARIANCE

Mr. Dunn reported that this is an application for a use variance at 2578 Route 44. Further, he stated that the previously-issued non-conforming use permit has expired. The potential buyer of the property wants to install a one-chair beauty salon and is applying for the use variance for that purpose. This application was adjourned from August 2008.

Ms. Rubenstein clarified that this is an application for a use variance and that there was no previous permit on the site. Mr. Feldweg concurred and stated that it is an application for the re-establishment of a prior non-conforming use. Ms. Rubenstein stated that this is an application for a use variance and not for a special use permit. All concurred.

Mr. Dunn reported that the file contains a letter from the Dutchess County Department of Planning and Development: a matter of local concern.

Mr. John Wolfe, attorney for the applicant, was present. He explained that it has been determined that a beauty parlor use will not fly on that site. Therefore, he stated that he's asking for an amended application to return the site to where it was prior to when the use variance was lost. He submitted copies of the amended application to Board members. He stated that they are withdrawing any part of the application that seeks the accommodation of a beauty parlor. He stated that that is what the former purchaser wanted to do on the site, but that purchaser is now gone. He stated that they have no purchaser at this time. He stated that they want to reinstate it to as it was before the deaths of both Alberts.

Ms. Rubenstein and other Board members asked what the ZBA would be issuing. Mr. Dunn stated that it sounds like a blanket use variance. Ms. Rubenstein stated that the prior non-conforming use has expired and that there is no mechanism in the Code by which to revive it. She stated that the applicant is asking to use this property that is in an R-1 zone, in a commercial application. Board members reviewed the Code to determine in which zone the proposed uses would be permitted. Mr. Wolfe explained that they have listed a number of potential commercial uses for the property. Ms. Rubenstein pointed out, and Board members agreed, that the ZBA usually sees applications for specific uses, rather than blanket uses. Mr. Dunn agreed that the applicant's amended application seems to be covering many potential uses and stated that the ZBA is not predisposed to granting an open use variance. Rather, he explained that the ZBA is usually asked to make a decision on a specific use. Ms. Rubenstein stated that what Mr. Wolfe is asking for is a rezoning of the site, which is up to the Town Board and not up to the ZBA.

Mr. Wolfe stated that it was a commercial operation at one point and that they would like to go back to that. Mr. Vogt stated that since the non-conforming use has expired, the ZBA does not have a vehicle by which to reinstate that use. He stated that Mr. Wolfe is basically asking the ZBA to spot zone that property as a C1 or C2. Mr. Wolfe stated that it could be interpreted that way but that was not the intent of the amended application.

Mr. Wolfe summarized that the Board is telling him that he has to go find a buyer for the property who will indicate a specific use and apply based on that specific use. Board members concurred. Mr. Vogt stated that the property is zoned residential and can be used for that purpose at this time.

Ms. Perkins also pointed out that the neighbors should have the ability and opportunity to say yea or nay about the use of the property. Mr. Wolfe stated that he understands.

Mr. Vogt explained to Mr. Wolfe that if the applicant wants to go forward with the current application, he may do so and the Board will vote on the application this evening. Alternatively, Mr. Vogt explained that Mr. Wolfe may withdraw the application. Mr. Wolfe stated that he is withdrawing the application.

3. APPEAL #926 – ABD STRATFORD – AREA VARIANCE

Mr. Dunn reported that this appeal is for an area variance from the permitted square footage for subdivision entry/directional signs located on Stratford Drive and Bower Road. He stated that 32 sq. ft is permitted and the signs that are in place total 41.8 sq. ft.

Mr. Joel Hanig, attorney for the applicant, and Mr. Robert Paul, property manager for ABD Stratford, were present. Mr. Paul was sworn in.

Mr. Dunn stated that the file contains:

- Recommendation from the Planning Board: positive recommendation based on the applicant's input to the Planning Board that this a temporary set of signs that will be removed prior to the dedication of the road. Further, the Planning Board requested that the ZBA also look at other sections of the Code as they pertain to this appeal.
(ORIGINAL RECOMMENDATION IS ON FILE)

- Recommendation from the Fire Advisory Board: no position as it does not appear to involve any fire or safety issues
- List of adjacent property owners who have been notified of this hearing
- Affidavit of publication in The Poughkeepsie Journal dated 9/18/08

Mr. Hanig stated that Stratford Farms is a fairly new residential subdivision. He stated that the lot count in the subdivision is 130+ single family lots. He stated that this is a very difficult economy to sell any houses, especially new construction. He stated that one of the problems that any developer has is in creating visibility of a subdivision for purposes of directional entry, marketing, and showing people its location.

Mr. Hanig stated that the applicant, without doing their homework, put up these two signs along the entry to the subdivision along Bower Road. He stated that one is on the north side of the entry road, and one is on the south side. He stated that the sign on the south side of the entry road is totally within what would be the proposed right-of-way that eventually would be dedicated to the Town of Pleasant Valley. He stated that the sign on the north side is partially within the proposed right-of-way. He stated that the intent is that these signs will simply be there during the marketing phase and would be taken down totally, monumentation and all, prior to dedication of the roadway to the Town of Pleasant Valley.

With respect to the measuring of the signs, Mr. Hanig stated that within the area of the masonry there is an indent. He stated that the plywood back of the indent is approximately 20.9' and onto that is pasted an emblem that says Stratford Farms. He stated that the pasted emblem, itself, is approximately a little bit less than 15 sq. ft. He stated that if they were looking only at the pasted emblem, they would not have to come before the ZBA because then the combination of the two pasted emblems would be less than what the ordinance allows. However, he stated that he takes a more expansive look at it and says that they are not just looking at the size of the pasted emblem but also at the size of the plywood back inside the monument. Therefore, he stated that it is a ZBA function and not the applicant's function to decide what is meant by the ordinance.

Mr. Hanig stated that each of the signs will create visibility to the subdivision whether you are traveling north from Route 44 along Bower Road or traveling south from Van Wagner Road towards Route 44. He stated that Mr. Paul will testify that they do get substantial traffic from each direction; more from Route 44 than from Van Wagner, but that it is not insignificant from Van Wagner. Therefore, he stated that the visibility is very important. He stated that one of the questions the Planning Board asked was if they get traffic from Van Wagner Road, and the answer is yes. He stated that without the sign that is on the south side the traffic would just go right by and not see the entry to the subdivision and it would not be marked.

Mr. Hanig stated that the entry signs, themselves, have no adverse effect on the neighborhood, and especially since they will be removed at the time of dedication of the roadway to the Town of Pleasant Valley. He pointed out the photos of the identical signs that were submitted to the Board. He stated that the actual measurement of the signs was done by Mr. Paul and that a diagram of the actual placement of the signs was also submitted.

Mr. Hanig submitted a sworn letter dated 9/5/08 (ORIGINAL ON FILE) from the principal of ABD Stratford, Dan Gueron, who cannot attend this meeting. Mr. Hanig explained that Mr. Gueron lists in his letter the many benefits from the visibility these signs provide.

Mr. Hanig noted that if the variance is approved, they must go to the Planning Board for a sign permit. He stated that they acknowledge that this is a self-created hardship because they did erect the signs without having any knowledge of the Town's requirements. However, he noted that self-created hardships do not preclude the relief from being granted.

Mr. Hanig suggested that the recommendation from the Planning Board to review a number of sections of the Zoning Code shows some confusion on the part of that Board as to how to read the code. He stated that there is no question that there is a specific section of the zoning code that deals with subdivision signs. He stated that it speaks of multiple signs – in the plural – and allows in the aggregate 32 sq. ft. He stated that they are asking the ZBA to consider what they have and noted that the ZBA could decide that the emblems, themselves, constitute the signs. In which case, he stated that they will not need a variance. However, he stated that he's taking a more expansive look at it and saying that it's more than the emblem and includes the backing to the sign, which brings it beyond the 32 sq. ft. Therefore, he stated that they are asking the ZBA to grant the requested variance with the condition that they will be removed totally prior to dedication of the road.

Ms. Rubenstein asked what the cost of the signs are. Mr. Paul stated \$2500.

Mr. Vogt noted that the Code defines a sign as including the backing.

Ms. Rubenstein asked whether they did a performance bond for the road. Mr. Hanig stated that the subdivision is predominantly within the Town of Poughkeepsie. He stated that there is a small segment within the Town of Pleasant Valley. Further, he stated that there were other attorneys that were involved and that there was substantial litigation, with which he was not involved. Ms. Rubenstein stated that the reason she raised the question is that the ZBA does not generally grant sign variances and that the word temporary makes her chuckle because there is a history of things that are temporary that turn out to be permanent. She stated that she is wondering if there are ways to ensure that it really is temporary; and if the Town of Pleasant Valley does not hold any leverage over the dedication of their road, then their statement that they will remove the signs when the road is dedicated does not hold a lot of merit. Mr. Hanig stated that the leverage is that the segment that is in here for the first number of lots is Town of Pleasant Valley and they cannot dedicate that roadway until those signs are removed. He stated that they don't want to keep the roads any longer than they have to, so at some point in time when there is a reasonable build out of the subdivision there's no question that they are going to go to both the Town of Pleasant Valley as well as the Town of Poughkeepsie. Ms. Rubenstein stated that we don't know when that is and that she does not know what the arrangement is on the road bond. She stated that the only way something like that could be granted is to make sure there was a way to ensure that the signs will be taken down. She stated that lots of things fall through the cracks – that's the nature of the beast. She stated that there are monument signs all over Town that were temporary that are still in place. She again wondered if there is a way to ensure that the removal really happens. Mr. Hanig reiterated that the stipulation is that there can be no dedication until the sign is removed.

Mr. Maucher asked if they currently have a permit for the signs. Mr. Hanig responded no, that that is why they are before the ZBA and, then, the Planning Board if the variance is granted.

Mr. Hanig stated that he was a zoning board member from 1975 – 1983.

Ms. Rubenstein asked how many people who have been attracted by the sign have purchased lots in the subdivision. Mr. Paul stated that there have been two from Hyde Park who purchased. Ms. Rubenstein asked when that was. Mr. Paul stated that one just moved in about a month ago, and the other moved in in February. Ms. Rubenstein asked how long they have been selling lots in the subdivision. Mr. Paul stated a year and a half.

Mr. Maucher asked how many lots are planned in the subdivision. Mr. Paul stated 134. Mr. Maucher asked how many have sold. Mr. Paul stated 4.

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

4. APPEAL #927 – FRANK MANCUSO – AREA VARIANCE

Mr. Dunn stated that this is an application for a 4'-7' area variance from the town required 100' setback from center of the road to accommodate an existing horse shelter that is 93'-96' from the center of the road. Further, he stated that the file also contains:

- Planning Board recommendation: positive as the Board does not feel that the requested variance will create any planning issues or create any hardships with adjacent property owners
- Affidavit of publication in The Poughkeepsie Journal dated 9/18/08
- List of adjacent property owners who have been notified of this hearing
- Recommendation from the Fire Advisory Board: no position as it does not appear to involve any fire or safety issues

Mr. Frank Mancuso, 772 Netherwood Road, Hyde Park, was present and sworn in. He explained that it is a run-in shed shelter for the horses, that there is no foundation to the shed. He stated that they measured and discovered that the existing shelter is 4' shy of the required setback from the center of the road. He explained that they have no neighbors that are affected by this. He stated that it is a pole barn with 3 sides and no foundation.

Mr. Vogt commented that due to the drop off from the road, the shelter does not appear to affect the sight line. Mr. Mancuso concurred that you can only see the top of the roof of the shelter.

Mr. Vogt asked what specific size variance Mr. Mancuso is requesting. Mr. Mancuso explained that he is requesting 4' – that the shelter is 96' from the center of the road.

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

5. MINUTES

Mr. Vogt: **MOTION TO ACCEPT THE MINUTES, AS CORRECTED, OF THE AUGUST 2008 ZBA MEETING; SECONDED BY H. CZECH; VOTE TAKEN AND APPROVED 4-0-0**

DISCUSSION

1. APPEAL #921 – LEONARD FRANK

Ms. Rubenstein stated that she understands the desire to do a site visit and take another look but stated that considering the overall standard that the ZBA has to apply – that the benefit to the applicant outweighs the detriment to the community – there really is no detriment to the community for the proposed location of the shed. She stated that it is sufficiently off the property line so that it can be maintained without going on the neighbor's property. Therefore, she suggested that the Board should go ahead and vote on it.

Mr. Vogt stated that the ZBA is charged with granting the least variance possible. Therefore, he would like to look at the property again. Ms. Czech asked if he looked at the site. Mr. Vogt stated that he was on the property but that he did not know that there is a well head that would prevent moving the shed farther away from the property line. Mr. Maucher concurred that he did not know about the well head and would like to look at the property again. Ms. Czech stated that regardless of the well head, based on the topography it does not make sense to consider the well head considering the rest of the issues on the site. She agreed that there really isn't any detriment to the neighborhood.

Mr. Maucher stated that they also need to consider future owners of the property which is one of the considerations for him. He stated that he thinks there is a viable alternative to what the applicant has requested – even if it is an additional 5' off the property line.

Mr. Vogt also pointed out that Ms. Vleming refers to the structure as a shop and Mr. Frank states that it is a shed. Therefore, he stated that it could be shop and that the future neighbors may not be happy with whatever Mr. Frank does in his shop. Ms. Czech remembered that Mr. Frank stated that it was going to be a workshop and never presented it strictly as a shed.

Ms. Rubenstein asked if Mr. Dunn wants to take another look at the property. Mr. Dunn stated that he's comfortable with the application. Ms. Rubenstein suggested that she propose a resolution to approve noting that it is enough off of the property line and that the ZBA has in the past approved structures that are closer to property lines.

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

Whereas Leonard Frank of 453 Creek Road has requested a 13' variance on the south side of the lot in order to construct a shed; and

Whereas the applicant presented testimony on August 28, 2008, and September 25, 2008; and

Whereas no one opposed the variance; and

Whereas the Fire Advisory Board has taken no position on the application; and

Whereas the testimony has shown the proposed location is the only practical location on the lot to place the shed because of topography and the configuration of the lot, which is long and narrow. In addition, the lot in the rear of the house is in a flood

plain and placing the shed closer to the circular driveway would require removal of trees and may impact the well head; and

Whereas the Zoning Board must weigh the benefit to the applicant versus the detriment to the community;

The ZBA now finds:

- 1. an undesirable change will not be produced in the character of the neighborhood**
- 2. the benefit sought by the applicant cannot be achieved by another method**
- 3. the amount of variance is substantial but sufficiently far from the property line to permit maintenance**
- 4. the proposed variance will have no an adverse effect on the physical or environmental conditions in the neighborhood**

Now, therefore, based upon the foregoing factors, the benefit to the applicant does out weigh the detriment to the neighborhood or community and, therefore, the variance is granted with the following condition:

- 1. the shed shall be no taller than 16 feet with a 20' x 16' footprint**

SECONDED BY C. PERKINS

VOTE TAKEN AND APPROVED 5-2-0

3. APPEAL #926 – ABD STRATFORD – AREA VARIANCE

ZBA cannot vote on this application until Dutchess County Department of Planning has responded to the application. Board members chose to discuss the application.

Ms. Rubenstein stated that she does not see how it will be possible for anyone to keep track of taking down those signs. Ms. Perkins asked if that can be made a condition of granting the variance. Ms. Rubenstein stated that it can be made a condition, but that the problem still remains. She stated that she has been in municipal work for a lot of years and this is exactly the kind of thing that falls between the tracks. She stated that there is absolutely no way to link it. Mr. Vogt referenced the Avalon sign that is still there, and another one on Salt Point Turnpike. He stated that if they had put up the right size sign, there would not be an issue. Ms. Rubenstein stated that she does not buy the argument that the signs will help them sell lots. Mr. Gerstner agreed. Board members agreed that it may be 10 years before the 130 lots are sold and the road is, then, dedicated and that there is no way for the Town to remember this agreement to remove the signs. Ms. Rubenstein recalled that in East Fishkill performance bonds lapsed and that there were hundreds of problems with dedicated roads. She suggested that there is no way to link it.

Mr. Maucher stated that he has a different issue with these signs. He stated that these are not directional signs, but that they are advertising signs in a residential zone where 6 sq. ft. is permitted. Mr. Dunn stated that it is a subdivision. Mr. Maucher stated that subdivision allow directional signs and that, to him, these are not directional signs. Rather, this is the name of the site. Mr. Vogt stated that these are monument signs. Ms. Rubenstein stated that they are not going to want to take them down in 10 years and by that time it will probably be someone else.

Mr. Feldweg also pointed out that the signs are in the highway right-of-way, although the road has not yet been dedicated. Once it becomes a dedicated road, the highway superintendent will have them down in a heart beat. Ms. Rubenstein stated that she not sympathetic. Mr. Vogt stated that he is not either.

Mr. Feldweg stated that they made a driveway cut without a permit, that they did more without permits than they did with permits.

Mr. Dunn suggested another alternative – add stone along the side and bottom to reduce the visible sign. Then it would just be the monument.

Ms. Rubenstein wondered what the neighbor thinks of these signs. Also, she stated that folks who are looking for new construction are not driving around looking, rather they are calling a broker. Board members agreed that the signs are not attracting people in to buy lots.

Mr. Feldweg recalled that Mr. Hanig's argument is that it alerts people driving by to the presence of the subdivision.

Mr. Vogt stated that the ZBA's practice has been to keep signs within the confines of the code. Ms. Rubenstein also stated that it is possible to make a clear argument that the detriment to the community outweighs the benefit to the applicant. Mr. Vogt stated that these signs are significant and that the Town does not want to turn into Route 44. Ms. Rubenstein stated that it is going to be a very long time till these signs are removed. Ms. Czech suggested that he make the sign smaller. Mr. Dunn concurred. Mr. Maucher suggested that he remove the emblem entirely and replace it with stone. Mr. Vogt pointed out that this is a residential area in which signs are restricted to 6 sq. ft. He read from the subdivision section of the code that allows non-illuminated directional signs within the limits of the subdivision or adjoining property with an aggregate total face area of not more than 32 sq. ft. Board members suggested that he make one or both of them smaller to conform to the code requirements. Mr. Maucher agreed that the applicant is advertising his development with these signs. Mr. Dunn pointed out that the emblem area of both signs is 16.92 sq. ft. and that they would be in compliance with the code if they filled in the sides and bottom with stone.

4. APPEAL #927 – MANCUSO – AREA VARIANCE

ZBA cannot vote on this application until Dutchess County Department of Planning has responded to the application.

Meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the September 25, 2008, 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 23, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on October 23, 2008, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:37 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Ronald Vogt
 Lisa Rubenstein
 Christina Perkins
 Tim Gerstner
 Steve Kish, Alternate

Members Absent: Helene Czech

Also present: Ed Feldweg, Zoning Administrator

1. **APPEAL #926 – ABD STRATFORD – AREA VARIANCE**

Mr. Dunn stated that this is a continuation of the hearing adjourned from 9/25/08. All parties have been sworn in. Mr. Dunn noted that the file now contains a referral from the Dutchess County Department of Planning and Development, which is a denial. Therefore, he explained that for this area variance to be granted by the ZBA, it must pass with a super majority.

Mr. Dunn read into the record (ORIGINAL ON FILE) the referral and comment letter from the Dutchess County Department of Planning and Development: “After considering the proposed action in the context of the County-wide and inter-municipal factors, the Department finds that the Board’s decision involves a matter of some concern.” The comment letter recommends that the ZBA should clarify what signs would be included in calculation of total aggregate space area and may want to request from the applicant a list of all signs in the subdivision. The comment letter also stated that the applicant has amplified the allowed 32 sq. ft. of signage and that the overall effect of the 130 sq. ft. of stonework, landscaping, and flags on four 16’ flagpoles is completely out of proportion with the street and surrounding neighborhood and appears to go beyond the intent of the code for allowing for adequate identification of a subdivision. The comment letter states that the entirety of each 84 sq. ft. structure serves as a sign for the subdivision, not just the smaller wooden portion of the subdivision name. The comment letter noted that the ZBA is charged under NYS law with granting the minimum variance necessary. The comment letter states, “in this instance no variance is necessary. The applicant chose to construct two oversized, duplicative instead of one correctly sized sign sited properly to address drivers from both directions.” The comment letter states that the applicant could remove one of the signs or reduce the size of each to within the Code standard. The comment letter provided the following recommendation: “to deny the requested area variance.” The comment letter further explains that if the ZBA decides to act contrary to this recommendation the law requires that it do so by a majority plus one, i.e., a super majority, of the full membership and that it notify the Department of the reasons for its decision.

Public portion of the hearing was reopened.

Mr. Robert Paul was present and had previously been sworn in. Mr. Dunn summarized that it was the opinion of the ZBA board members and also the DC Department of Planning that the signs are much too large. He stated that the Board understands that the applicant is selling lots and needs to grab the attention of people passing by. However, he stated that the ZBA is charged with finding the least variance possible. Further, he noted that it will take some time to sell the lots – possibly years – and to have a violation exist for that long is a problem.

Ms. Rubenstein noted that at the last meeting there was a discussion and a question of whether there is a performance bond with the Town of Pleasant Valley to secure the dedication of the road, which might be a way to ensure that the signs were removed once the road is dedicated. She stated for the record that she happened to see Mr. Hamid, Stratford's attorney, and that she asked him that question and also asked Mr. Feldweg that question. She stated that what seems to be coming back to her was that, because the approval was the subject of litigation and that the Town of Pleasant Valley was directed to approve its part, nobody took a bond on any portion of the road and that there was going to end up being some inter-municipal agreement where the other Town took over the maintenance of the road. She stated that she does not think the Town of Pleasant Valley has any leverage over the road, therefore, and asked if Mr. Paul has any information on this. Mr. Paul responded no. Ms. Rubenstein stated, therefore, that the Town of Pleasant Valley has no leverage; unlike a normal Pleasant Valley subdivision where the applicant had posted the performance bond to secure the completion of the road, the Town would have leverage to not release the bond until all conditions have been met.

Mr. Dunn stated that not having any leverage would put the Town in a more precarious position. Ms. Rubenstein noted that even though the current applicant assures the Town that the signs will be removed, it might be different owners at the time the road is dedicated. Ms. Perkins stated that there was some discussion about putting conditions on this, but without some leverage there is no way to enforce those conditions. Ms. Rubenstein also pointed out that there may be no one at the time of road dedication who remembers the history of this application and the conditions attached to it.

Mr. Vogt stated that per Dutchess Planning's comments there are two not one, so it is double the problem. Mr. Dunn agreed that each sign exceeds the allowed size.

Mr. Dunn asked if Mr. Paul wished to add anything to the testimony. Mr. Paul stated that they are struggling to attract attention to the subdivision and to sell houses. Mr. Dunn agreed and stated that the signs look attractive but that the problem is that the ZBA cannot bypass the Code restrictions based on the appearance. He stated that the ZBA must be fair across the board to all applicants.

Public portion of the hearing was closed.

2. APPEAL #927 – MANCUSO – AREA VARIANCE

Mr. Dunn stated that this is a continuation of the hearing adjourned from 9/25/08. Mr. Dunn noted that the file now contains a referral from the Dutchess County Department of Planning and Development: no comment – a matter of local concern.

Code. Ms. Perkins emphasized that the Board does not want to set a precedent. Ms. Rubenstein stated that she does not think that having the big signs will make a difference to buyers or will help the seller sell lots. Mr. Vogt stated that if you're going to purchase a lot, you're not purchasing because of the sign.

Ms. Rubenstein stated that these signs are way bigger than what the ZBA has ever approved and that if the Board starts making exceptions for ABD Stratford, then the Board needs to make exceptions for others. She stated that if the Town wants to make the standard different for subdivisions, then they should make that decision. Mr. Dunn agreed that it is Town's business. Mr. Gerstner pointed out that this is all self-inflicted, that they did all this without any permits. Ms. Rubenstein stated that the Town has absolutely no leverage, that the Town is not even going to maintain that road.

Mr. Maucher questioned why the ZBA is involved and asked why the ZBA can't tell the applicant that he needs to get a permit either from the Zoning Administrator or from the Town Board. He suggests that the applicant deal with them. Mr. Dunn stated that he is before the ZBA because he was denied the permit. Mr. Feldweg stated that there was never any application for the signs or for the driveway cut on Bower Road. He stated that when he inherited this application, the signs were already in place and he sent them notice of violation.

Ms. Rubenstein stated that there is nothing to convince her that this applicant's need is greater than any other need of anybody who has ever put a sign up in the Town. She stated that there are signs in violation, but that the ZBA does not approve them.

Ms. Perkins stated that if the ZBA grants a variance that substantial, the Board will be setting a precedent that will come back to haunt the ZBA. Ms. Rubenstein agreed.

Mr. Vogt stated that, in his opinion, he cannot grant this in any form because it exceeds the Code. He stated that the ZBA's posture has been to stay within the standards. He stated that the reason is to maintain the signage in the Town so that it does not become a Route 9 with neon and oversized signs, and becomes gaudy. He stated that whether it is an attractive display does not even come into play. He stated that the Town has the regulations, which is what the Board feels is beneficial to all the residents – it is a fair standard both for residential and for commercial.

Mr. Gerstner pointed out that the applicant is only measuring the signage between the stone and is not taking into consideration the entire stone monument – which is something that the ZBA considers to be part of the sign.

Ms. Rubenstein stated that the stonework is 130 sq. ft. Mr. Vogt stated that the wooden portion of the signs is 41 sq. ft., which exceeds the regulations. Mr. Maucher stated that there is no agreement on that either, because he does not agree that these are directional signs. Ms. Perkins also mentioned that DC Planning and Development considered the stonework as part of the sign because it is not attached to a stone wall. Mr. Maucher stated that he does not consider these signs to be directional signs and, therefore, there is a different size limit (6 sq. ft. limit) in residential area.

Board members reviewed the sections of the Code that apply to this appeal. Ms. Rubenstein read from the Code the regulations for directional signs for subdivision, which can be a sign

that says here's my subdivision. She referenced the Red Fox Ridge subdivision signs, which are helpful in finding the subdivision. She mentioned that these Stratford signs could be helpful, but that they are duplicative and they are way too big. Mr. Vogt referenced a directional sign for Carrington Court on Hibernia, which is the only directional sign that he's aware of that actually outlines the lots. He stated that it shows Carrington Court and Forest Meadow and a photo of the layout.

Ms. Rubenstein stated that she would be OK with one sign that was 32 sq. ft. that said Stratford Farms and shows where the property is. She noted that they have a billboard on Route 44 that directs people to make the next left and then they would need some sign to designate the subdivision. Mr. Maucher stated that he is distinguishing between directional and advertising. He stated that, to him, the sign is advertising; it does not say "homes for sale," but it identifies that property at Stratford Homes. Ms. Rubenstein stated that, historically, the Planning Board approved the Red Fox Ridge sign as some kind of a label for the subdivision and they approved it without sending them to the ZBA for a variance. She stated that that was before her time on the Board; but if you look at that as a guide, then one sign for Stratford Farms designating where the subdivision is and within the 32 sq. ft. would be acceptable. She stated that she considers that a directional sign, a label of where the subdivision is.

Mr. Dunn asked if they still have the sandwich board sign out there. He also noted that there's another sign inside the property that says, "welcome to Stratford Farms." He suggested that he could see the ZBA saying: this sign comes down on the right side of the driveway, the sign comes down on the left side of the driveway, the "welcome to Stratford Farms" sign comes down, and the sandwich board sign is removed, now do a 32 sq. ft. sign and that's all they can do. He stated that he finds the signs to be attractive, but they are in violation. Ms. Rubenstein concurred and added that there are too many of them. Mr. Vogt stated that if they had come in and checked for the permit they would have found out before they built and created their own self-created hardship.

Mr. Vogt and Ms. Rubenstein agreed that the Town of Pleasant Valley has no leverage and no performance bond and the Town will be living with this for many years. Ms. Rubenstein acknowledged that none of the neighbors are present at this meeting, but pointed out that the signs are really nice now but in 5 years or 10 years when these applicants are gone and most of the lots are sold, who is taking care of that. Mr. Maucher stated that if he gets the permit, he has to renew it every year. Ms. Rubenstein also pointed out that it is one thing to maintain a small sign – that if it is not maintained and some bushes grow in front of it and no one sees it. But she stated that these signs are humongous and that she is concerned about who will maintain them in the future.

Board members discussed the option of requiring them to move the signs onto the Town of Poughkeepsie property and just put a 32 sq. ft. sign on the Pleasant Valley property. Mr. Maucher asked why not just have them take the signs down right now. Ms. Rubenstein stated that she thinks the Board should. Mr. Vogt stated that if the signs were reduced in size to meet the Code requirements, then he should be able to go before the Planning Board. But because of what he's got with violations, Mr. Vogt stated that the applicant created his own problem.

Ms. Rubenstein confirmed the specific variance requested. Mr. Dunn noted that Dutchess County does not agree with their calculations on the variance. Board members discussed

whether to include the stonework as part of the area of the signs. Ms. Rubenstein stated that the applicant is saying that their sign is 41.8 sq. ft. and the Board is saying that the sign is more like 132 sq. ft because the sign includes the entire structure. Ms. Perkins pointed out that that is suggested by the DC Planning and Development Department. Mr. Maucher read from the Code the definition of sign area of a ground sign, which includes all of the decoration. He stated that he would include all of the stone as part of the decoration. Other Board members agreed.

Ms. Rubenstein: **RESOLUTION TO DENY THE VARIANCE (ORIGINAL ON FILE)**

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

Discussion: Mr. Dunn raised the question of whether the motion should direct the applicant to remove the signs. Ms. Rubenstein stated that she does not think the ZBA has the authority to tell the enforcement officer how to enforce. Rather, she stated that the ZBA denies the variance and interprets what the size of the sign should be.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 7-0-0

Dunn	In favor
Gerstner	In favor
Rubenstein	In favor
Kish	In favor
Perkins	In favor
Vogt	In favor
Maucher	In favor

2. APPEAL #927 – MANCUSO – AREA VARIANCE

Mr. Vogt recalled the discussion on this application from the previous month's ZBA meeting. He stated that because the property drops off steeply, it is not possible to see the horse shelter from the road and that he has no problem with this appeal. He stated that it is a very small variance and that he has no issues with this appeal because there are no sight issues.

Mr. Dunn stated that he discussed this with Mr. Feldweg, who stated that often times it is a sight problem and possibly lot lines concerns. He stated that the Code requires that any structure housing animals needs to be 100' from the lot line. He noted that either way this is in violation, but all the applicant needs is a 4' variance; and Mr. Dunn stated that he does not see a problem with this. He agreed with Mr. Vogt that there are no sight issues, that all you can see is the top of the structure from the road if you really look for it.

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

Whereas the applicant, Frank M. Mancuso, 772 Netherwood Road, has submitted proof in support of his application for a variance of 4' from the requirement that the structure must be 100' from the center of the road as required by Section 98-12, and

Whereas such proof has been duly considered by the Board at a public meeting on September 25, 2008, and

Whereas the Dutchess County Department of Planning and Development has advised the Board that it is a matter of local concern, and

Whereas the ZBA received a positive recommendation from the Planning Board and the Fire Advisory Board took no position as it does not appear to involve any fire or safety issues, and

Whereas the structure is a run-in shed shelter for horses with no foundation, and

Whereas no undesirable change will be produced in the character of the neighborhood or as a detriment to nearby properties, and

Whereas the particular location of the shed makes it barely visible from the road due to the topography of the lot, and

Whereas the requested area variance is small, now

Therefore the Board determines that the benefit to the applicant far outweighs any detriment to the neighborhood or community, and

Therefore grants the variance.

SECONDED BY T. GERSTNER

VOTE TAKEN AND APPROVED 7-0-0

3. APPEAL #928 – BARTSCH – AREA VARIANCE

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

Whereas Kevin Bartsch of 28 West Road has requested an area variance on the left side of his property of 11' to put a deck in to surround a hot tub, and

Whereas Mr. Bartsch appeared at the Zoning Board Appeals for a public meeting on October 23, 2008, and

Whereas there was no opposition, and

Whereas the lot in question is small and there does not appear to be any other feasible place on the property to place the hot tub, and

Whereas the line of the deck would continue to be the same distance from the side yard as the existing house and deck and would simply extend it a little further, and

Whereas the Planning Board has given a positive recommendation to the Zoning Board, and

Whereas the Fire Advisory Board has taken no position, now

Therefore the Zoning Board of Appeals determines that the benefit to the applicant outweighs the detriment to the neighborhood or community, and

Therefore grants the variance of 11'.

SECONDED BY C. PERKINS

VOTE TAKEN AND APPROVED 7-0-0

4. MINUTES

Board unanimously approved the minutes, as corrected, of the ZBA September 2008 meeting.

Meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the October 23, 2008, 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 20, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on November 20, 2008, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:33 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Helene Czech
 Christina Perkins
 Tim Gerstner
 Steve Kish, Alternate

Members Absent: Lisa Rubenstein
 Ronald Vogt

Also present: Ed Feldweg, Zoning Administrator

1. APPEAL #929 – DARIA – AREA VARIANCE

2. APPEAL #930 – DARIA – AREA VARIANCE

Mr. Dunn read from the applications: This application is for a proposed 3-lot subdivision of the lands of Daria containing about 26 acres. The property currently encompasses 3 separate, pre-existing dwelling units. The purpose of the subdivision is to create 3 individual lots, one for each and every existing dwelling unit. There will be no change to any portion of the land or the 3 existing buildings. The current land use of the site is 3 single-family residences. Variances requested:

- Lot #1: no variance requested or required.
- Lot #2: 12.5' variance from Area and Bulk Requirements, minimum lot width at building line (appeal #929)
- Lot #3: 39.5' variance from Area and Bulk Requirements, minimum lot width at building line (appeal #930)

Mr. Dunn stated that the code requires 100' minimum lot width at the building line.

Mr. Dunn reported that the file contains:

- List of adjacent property owners who have been notified of this hearing
- Affidavit of publication in The Poughkeepsie Journal dated 11/12/08
- Recommendation from the Fire Advisory Board: no position as it is a matter solely for the ZBA
- Recommendation from the Planning Board: positive recommendation based on the fact that this is taking a non-conforming situation and making it more conforming and that the Planning Board will address the concern regarding a shared well if, and when, this application comes back to the Planning Board for subdivision review.
- Referral from DC Department of Planning and Development: no position as both appeals are a matter of local concern

Mr. Anthony Daria, 373 Route 44, Amenia, NY 12501, and Mr. Mike Dalbo, 10 Crum Elbow, Hyde Park, NY 12538, were present and were sworn in.

Mr. Dalbo stated that the updated maps that were submitted include updates to the sewage disposal system areas and a note regarding the location of those. He stated that the drawings clearly show that Mr. Daria is forced into this situation to bring the lots closer to conformity because everything is existing.

Mr. Maucher asked about the deck on Lot #3 and whether they will be requesting a side lot variance for it. Mr. Dalbo explained that the variance was already granted for that.

Public Hearing was opened – no one spoke. Public hearing was closed.

3. APPEAL #932 – LEO – SPECIAL USE PERMIT

Mr. Dunn reported that this is a request for a Special Use Permit to allow two home occupations: a child's hair salon and an office for a driving school. He stated that the file contains:

- A affidavit of publication in The Poughkeepsie Journal dated 11/12/08
- List of adjacent property owners who were notified of this hearing
- Recommendation from the Planning Board: positive recommendation and note that if the ZBA grants the permit it is mandatory that the applicant come back to the Planning Board for full site plan review where issues regarding parking, lighting, septic capabilities and water capabilities on this site will be addressed.
- Recommendation from the Fire Advisory Board: no position as it is solely a matter for the ZBA
- Referral from the DC Department of Planning and Development: no comment as it is a matter of local concern
- Letter from the Town's attorney with regard to the question of two home occupations in one residence: "it appears that in a multi-family building each dwelling unit may be entitled to engage in a home occupation authorized by the Code and are not limited to location within the actual dwelling unit."

Mr. Anthony Leo, 100 Rochdale Road, Poughkeepsie, NY 12603, was sworn in. Ms. Barbara Ward –Leo, same address, was also sworn in.

Mr. Leo stated that by NYS law the driving school office must be a minimum of 200 sq. ft. Mr. Dunn asked if he will have the required square footage. Mr. Leo responded yes. Mr. Dunn asked if he will have clients in the home. Mr. Leo explained that he teaches in high schools and at the Y. He stated that the only reason clients would come to his office would be to make a payment or pick up a certificate.

Mr. Maucher asked if Mr. Leo is the current owner of the property. He responded that he is not. Mr. Maucher raised the question of needing a letter from the owner saying that Mr. Leo can apply for the Special Use Permit. Mr. Dunn asked if the purchase of the property is contingent upon approval. Mr. Leo stated that it is. Mr. Maucher asked if they needed an authorized letter from the owner. Mr. Feldweg explained the process. Mr. Gerstner stated that a permit would be moot if they do not own the property. The application is contingent upon the purchase.

Mr. Kish asked if they will have other employees. Mr. Leo stated that there will be no other employees. Mr. Dunn asked if they will be cutting children's hair only – no coloring being done. Mr. Leo confirmed that it will be children's hair only.

Public hearing was opened.

Mr. Stephen Curley, 343 North Tower Hill Road, Millbrook, NY 12545 was sworn in. Mr. Curley noted that this property has been in front of this board for a variance once before and that there is an issue there with the water. He stated that his testimony is on record in the record of Appeal #923. He submitted a copy of a letter from his attorney, Mr. Rappleyea, which was placed on the record in the previous appeal.

Mr. Curley explained that there is an issue with the water and an agreement that was entered into a couple of years ago when he bought the property. He explained that the issue has not been resolved. He stated that his attorney's letter is dated 9/18/08 and that to this point he has not been contacted and neither has his attorney. Mr. Dunn asked if Mr. Curley is an adjacent property owner. Mr. Curley explained that he is an adjacent property owner and that, presently he supplies the water to that property, as there is no well on that property.

Mr. Dunn explained that the Planning Board explained in its referral to the ZBA, if the ZBA grants the appeal, it is mandatory that the applicant go back to the Planning Board for a full site plan review where issues regarding parking, lighting, septic capabilities and water capabilities on the site will be addressed. He explained that those issues are not the purview of the ZBA, but are the purview of the Planning Board.

Mr. Curley stated that he supplies the water to all three of the houses at 2570, 2574, and 2576/78. Mr. Dunn asked if his concern is that there would not be enough water. Mr. Curley explained that it is more than one concern. He stated that on the original easement there was supposed to be a well on that property and they were only supposed to be supplying water to it in the case of a drought. He stated that there have been two times where it was resolved by a rainstorm and another time they had to have a water truck come to the site. He stated that there is no well on the property; and that they are not supplementing the water, but rather are supplying the water. He stated that it is onerous – a lot to do – for 4 residential units. He stated that they have replaced all fixtures with water-saving technology.

Mr. Curley stated that his concerns are, first, that there was never a well on the property and that he is not supplementing the water. Further, he stated that a hairdresser is a huge draw on water – that a one-chair salon will use as much water as the two building that they have. He stated that it will put a huge strain on a fragile resource. He stated that he is glad there is interest in this property and that he does not want to derail its use. But he stated that he wants the Town to know that there are issues on the site that must be resolved before a car wash is installed on that site.

Mr. Dunn reiterated that those concerns would be taken up by the Planning Board and stated that the ZBA looks at all applications with regard to the Zoning Code, exclusively. He noted that, of course, there should be adequate water on that site; but again explained that is not what the ZBA addresses. He advised Mr. Curley to bring this up with Joe Labriola, chair, Planning Board, and that board's members.

Mr. Curley stated that he also came to the ZBA meeting so that the potential new owners are aware of these circumstances. He stated that, fortunately for the Leo's, now they know that there are issues on the site and that he is looking to give people the information so that they can make an intelligent decision.

Mr. Leo came forward and stated that if the permit is approved he intends to drill another well, pending approval by the Board of Health.

Public Hearing was closed.

4. APPEAL #933 – GASPARRO – SPECIAL USE PERMIT

Mr. Dunn stated that this is a request for a Special Use Permit for a professional office at 1325 Route 44 at the intersection of Route 44 and Bower Road. He stated that the file also contains:

- Affidavit of publication in The Poughkeepsie Journal dated 11/12/08
- Referral from the Fire Advisory Board: no position as it is a matter for the ZBA
- List of adjacent property owners who have been notified of this hearing
- Recommendation from the Planning Board: positive recommendation with the stipulation that if the Special Use Permit is granted, the applicant will be directed to come back to the Planning Board for a full site plan review
- Referral from the DC Department of Planning and Development: decision on this Special Use Permit is withheld because the application is considered to be incomplete. The materials that are missing pertain to parking areas, traffic access, circulation, landscape, etc. The Department must receive this information and asks that this application be resubmitted with the missing documentation in order to make its determinations.

Mr. Dunn explained that the ZBA, therefore, will not be able to make a decision on this appeal tonight and can take the applicant's testimony and will keep the public portion of the hearing open. He explained that until the DC Department of Planning receives the documents that they deem to be necessary for the application, the ZBA cannot reach a decision.

Mr. Ron Gasparro, 1343 Route 44, Pleasant Valley, NY 12569 was sworn in. He stated that he understands what the County is asking for, but stated that he has been before the Planning Board twice already and must return to that board for a detailed site plan review for parking and the other items that the County referred to. Therefore, he stated he thought that it would have been duplicitous to have come through with a plan now that shows all of those details, which would inevitably be modified when the application returns to the Planning Board for their review. He stated that he had hoped that the ZBA would refer the application to the Planning Board for that approval process and that the ZBA would restrict its review to the Special Use Permit. He stated that he would provide the Planning Board with all the details regarding parking, traffic, and landscaping. And he expressed his concern that it would be premature to provide all these details now, as they will change during the Planning Board's review. He mentioned the expenditure of money for plans that will change again when the Planning Board reviews them. He felt that all of the work would have been for naught, that he would be doing everything twice. He lobbied for the Special Use Permit being granted with the condition that it goes back to the Planning Board for review of all the planning issues.

Mr. Dunn stated that to the best of his knowledge the ZBA cannot render a decision without a referral from the DC Department of Planning and Development. He expressed the Board's understanding of Mr. Gasparro's points and the Board's concern for him and his situation,

but explained that the ZBA cannot act without the County's referral. Mr. Gasparro stated that there is a lot of time and money spent in creating plans that the Planning Board is also asking for. He mentioned the NYS Department of Highway for approval of the entrance and the Town of Pleasant Valley for approval of the entrance and secondary entrances and the Planning Board approving the parking, landscaping, and other agencies. He asked if there is some way that the majority of the Board can vote to push this application on to the Planning Board with a recommendation. Mr. Dunn stated that it is not possible for the ZBA to vote without a County referral and noted that if the County had given a negative recommendation, then the ZBA would have to approve it by a super majority (5 of the 7 ZBA members).

Mr. Gasparro stated that it seems that he has to do a full site plan in order to get the Special Use Permit and that he does not think this is right. Mr. Dunn noted that one of the reasons is that the site is in a residential area. Mr. Gasparro stated that he did not expect the County to respond this way.

Mr. Maucher asked about the For Sale sign on the property. Mr. Gasparro stated that he owns the property. Mr. Maucher asked what is for sale, whether the property that is for sale is the property for which he's looking for a Special Use Permit. Mr. Gasparro responded, yes, that he has a For Sale sign on all of his properties. He explained that the purpose of the Special Use Permit is that he needs more space for his own offices, that he needs to hire 10 more people in the next year in order to expand.

Mr. Dunn explained that the Public Hearing will remain open. ZBA provided Mr. Gasparro with a copy of the letter from the County. Mr. Gasparro asked again if there is any other option, if there is any advice available other than to deal with the rules. Mr. Dunn explained that, unfortunately, the ZBA must deal with the rules and cannot vote on this appeal without a referral from the County.

Public Hearing was opened and adjourned to the December 2008 ZBA meeting.

Mr. Gasparro will provide the required documents to the County.

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DISCUSSION

1. APPEAL #929 – DARIA – AREA VARIANCE

The variance requested on this Lot #2 is 12.5' from the minimum width at the building line. Board members agreed that there is nothing that the applicant can do to decrease the requested variance and that granting the variance will bring the property more into compliance with the Code.

Ms. Perkins read the Notice of Decision into the record and made the motion to grant the variance; seconded by Mr. Dunn; vote taken and approved 6-0-0

2. APPEAL #930 – DARIA – AREA VARIANCE

The variance requested on this Lot #3 is 39.5' from the minimum width at the building line. Board members agreed that there is nothing that the applicant can do to decrease the requested variance and that granting the variance will bring the property more into compliance with the Code.

Mr. Gerstner read the Notice of Decision into the record and made the motion to grant the variance; seconded by Mr. Maucher; vote taken and approved 6-0-0.

3. APPEAL #932 – LEO – SPECIAL USE PERMIT

Mr. Maucher questioned the permitted uses on the property. Mr. Feldweg referenced Code section 98-24 regarding Home Occupations. Board discussed previous commercial uses on this site.

Ms. Czech read into the record Part II of the Environmental Assessment Form and the Resolution to approve the Special Use Permit.

Ms. Czech: motion to grant the Special Use Permit for a driving school office and a one-chair hair salon for children with the following conditions:

- **One-chair salon, hair cutting only, servicing only children**
- **Driving school office – no classes conducted on this site, office is solely administrative**

SECONDED BY C. PERKINS

Discussion: Mr. Feldweg pointed out that this is something that the Board has never done before – putting two Special Use Permits in one building. He stated that looking into the future he's wondering what happens if Mr. Leo moves out, what happens to the other office. He suggested that the permit needs to state that both people need to be there. Board members discussed the fact that the permit is for these specific uses and if someone moved out and a new occupant moved in, they would have to come to the ZBA for a new Special Use Permit. Ms. Perkins suggested that the permit state "for the life of the existing business." Ms. Czech mentioned the possibility of putting a time limit on the permit. Mr. Feldweg stated that for this permit for these home occupations there must be two people living in the building and having two home occupations. He stated that if one person is living there, then the home occupation is null and void. Board members agreed with this analysis.

Mr. Maucher asked about the 3 apartments in the R-1 zone. Board members noted that they are pre-existing.

VOTE TAKEN AND APPROVED 6-0-0

4. MINUTES

Board unanimously approved the minutes, as corrected, of the ZBA October 2008 meeting.

Meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the November 20, 2008, 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 18, 2008

This meeting of the Pleasant Valley Zoning Board of Appeals took place on December 18, 2008, 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
 Bob Maucher
 Helene Czech
 Christina Perkins
 Tim Gerstner
 Steve Kish, Alternate
 Ronald Vogt

Members Absent: Lisa Rubenstein

Also present: Ed Feldweg, Zoning Administrator

1. APPEAL #933 – GASPARRO – SPECIAL USE PERMIT

This appeal was adjourned from the November ZBA meeting. Mr. Ron Gasparro was sworn in at that meeting.

Mr. Gasparro reported that he met with DC Department of Planning, submitted the plans that they required, and that nothing has changed on the project.

Mr. Vogt asked what the proposed height of the building is. Mr. Gasparro responded that maximum height will be 14'. Mr. Vogt asked why the plans say 35'. Mr. Gasparro stated that is the maximum allowed. Mr. Vogt stated that the plans do not accurately reflect the proposed building. Mr. Gasparro stated that the building will be one story to a maximum height of 15'.

Mr. Dunn read into the record (ORIGINAL ON FILE) the Dutchess County Department of Planning's comment letter. Their issues include:

- Multiple traffic/curb cuts in the area along Route 44
- Suggestion to share driveway with adjacent Medical Arts Building
- Rotate the building and locate it closer to the road
- Locate the parking behind the building
- Plant street trees along Route 44
- Size of building is 11,000 sq. ft. on the map, but application says 10,000 sq. ft.

Mr. Gasparro responded:

- Size of the building includes a covered porch along the front of the building
- Professional building – no retail sales
- Board of Health deep hole tests – all OK
- Shared access with Medical Building is not practical or possible – drainage for water and sewer
- Landscape plan is in process

- Sight distance is OK for the driveway
- 100' setback per deed restriction – cannot bring building closer to the road
- Impractical to rotate the building or to put parking to the rear
- Is consistent with the neighboring 9000 sq. ft. medical building

Mr. Vogt expressed concern with a large building planned for a residential area – increasing the non-residential usage and expanding this precedent in the area.

Mr. Kish asked about lighting in the parking lot. Mr. Gasparro described non-invasive, high-pressure sodium lights – one light on the outside facing in. There will be no spillage and lights will automatically go off at 11 p.m. There will be no parking lot lights.

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

2. APPEAL #934 – FIRST REALTY PLAZA – SPECIAL USE PERMIT

This is an application for a Special Use Permit to allow two additional office uses. C.O. currently approves one office. The applicant describes the proposed tenants as psychological and counseling services. The file contains:

- Referral from the Planning Board: positive recommendation because the Board thinks this is a good use for the site and asks that the ZBA consider the following:
 - That there is sufficient number of parking spaces for employees and clients
 - Department of Health to comment on the ability of the water and sewer to handle the increased load
 - If the Permit is granted, it be granted specifically for a psychologist's office and a therapist's office. Any future uses that are not compatible with these, it would require an application for a new Special Use Permit.
 - If the Permit is granted, the applicant must come back to the Planning Board for a Revised Site Plan approval
- Affidavit of publication in The Poughkeepsie Journal dated 12/12/08
- List of adjacent property owners who have been notified of this hearing
- Referral from the Fire Advisory Board: no position as it is a matter for the ZBA
- Notarized consent letter from owner for Dr. Perl to represent her at this meeting

Dr. Joseph Perl, 7 Talbot Drive, Pleasant Valley, NY was sworn in. He reported the applicant purchased the building from Mr. Bovee, who had used it for construction. Mr. Bovee continues to rent a small part in the back. Ms. Milicaj has one employee and occupies to offices in the main building. There are three additional offices in that building. Dr. Perl will take the large office as an independent clinical psychologist. One social worker and one therapist will occupy the other two offices and will share one business together. Dr. Perl's business is independent of theirs. These businesses are low impact – one patient is seen at a time. Dr. Perl is full-time on the site. The social worker has a full-time job and will be there a couple of evenings a week. The marriage and family therapist is just starting her business.

Dr. Perl mentioned the septic system, which is a cesspool. The water usage will be less than it was when Bovee was on the site. Ms. Milicaj's business is conducted over the phone with few walk-ins. Dr. Perl's would be the busiest office on the site. Bovee now only has 2 employees – he used to have 12. Three people would be added to the site, plus the patients.

Well and Septic: Dr. Perl stated that the cesspool was installed in 1967 by DeGrout and there have been no problems since then. Ms. Milicaj reported in her 12/17/08 letter to the Planning Board that she has had a number of conversations with the Health Department. The Health Department was not willing to write a letter about the system on the site but thought that there would not be a problem. Eight employees now compared to 12 employees in the past.

Ms. Czech expressed her opinion that parking would not be an issue – that individual clients will be on the site for one hour at a time. The impact is not significant. The back parking lot is also available.

Public Hearing was opened.

Mr. Conrad Fingado, 1726 Main Street, Pleasant Valley, NY was sworn in. He expressed his concern about Dr. Perl's clients. He lives next door to the Pleasant Valley Motel where pedophiles are living. He asked if Dr. Perl's psychiatric patients would potentially be criminals. He is afraid that this would affect the quality of life for him and his family and he is concerned about density, also.

Dr. Perl stated that he worked for 15 years at the DC Department of Mental Hygiene, which is a publicly funded clinic that accepts Medicaid and has mandated patients. He explained that in his private practice he sees a lot of physicians, attorneys, and administrators. He is not supported by NYS or Federal funds. He is paid directly by his patients and his clients are a very different population from a public clinic. He stated that he is not licensed to take those mandated patients, in any case. Also, he is a clinical psychologist and is not permitted in NYS to prescribe medication.

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DISCUSSION

1. APPEAL #933 – GASPARRO – SPECIAL USE PERMIT

Mr. Dunn read into the record Part II – Impact Assessment of the EAF Short Form (ORIGINAL ON FILE). Board discussed impact on traffic pattern on the site and on Route 44. Board concurred that no significant environmental impact will occur as a result of this appeal.

Ms. Czech read into the record the Resolution to Grant the Special Use Permit (ORIGINAL ON FILE).

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

**SECONDED BY T. GERSTNER
VOTE TAKEN AND APPROVED 7-0-0**

Mr. Maucher	yes
Mr. Kish	yes
Mr. Vogt	yes
Ms. Czech	yes
Ms. Perkins	yes
Mr. Gerstner	yes
Mr. Dunn	yes

2. APPEAL #934 – FIRST REALTY PLAZA – SPECIAL USE PERMIT

Mr. Dunn read into the record Part II – Impact Assessment of the EAF Short Form (ORIGINAL ON FILE). Board concurred that no significant environmental impact will occur as a result of this appeal.

Board members discussed the Planning Board’s recommendations. They concurred that parking is not an issue. They discussed the potential impact on the septic and noted that the Department of Health declined to comment on the current capacity of the septic and water.

Board members discussed the imposition of conditions on the Special Use Permit to allow only these specific proposed tenants or these specific proposed professional uses. Board members concurred to limit the Permit to these proposed professional tenants –Dr. Perl and the two counselors. If the tenants leave, and if the applicant wishes to replace the tenants, then the applicant must apply for a new Special Use Permit.

Ms. Perkins read into the record the Resolution to Grant the Special Use Permit (ORIGINAL ON FILE).

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

- **This Special Use Permit is granted for the two specific professional tenants proposed by the applicant: Dr. Perl and the two counselors**
- **If these proposed tenants leave the site and the applicant wishes to replace the tenants, the applicant must apply for a new Special Use Permit.**
- **Applicant must apply to the Planning Board for site plan approval**

**SECONDED BY H. CZECH
VOTE TAKEN AND APPROVED 7-0-0**

Mr. Vogt	yes
Ms. Czech	yes
Ms. Perkins	yes
Mr. Kish	yes
Mr. Maucher	yes
Mr. Gerstner	yes
Mr. Dunn	yes

Mr. Perl asked for clarification on the next step. Board explained that the applicant must apply to the Planning Board for site plan review and, eventually, for a sign permit.

4. MINUTES

Board unanimously approved the minutes, as written, of the ZBA November 2008 meeting.

Meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Helen D. Dickerson

Secretary

The foregoing represents unofficial minutes of the December 18, 2008, 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