

PLEASANT VALLEY ZONING BOARD OF APPEALS

January 28, 2010

This meeting of the Pleasant Valley Zoning Board of Appeals took place on January 28, 2010, 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: Lisa Rubenstein, Acting Chair
Bob Maucher
Steve Kish
Tim Gerstner
Helene Czech
Ron Vogt

Absent: John Dunn, Chair

Also present: Bruce Donegan, Zoning Administrator
Ed Feldweg, Depute Zoning Administrator

Ms. Rubenstein announced that John Dunn, Chair of the ZBA, is not able to be at the meeting tonight and that she is filling in for him as Acting Chair.

1. APPEAL #942 – ZANI CORPORATION – USE VARIANCE

Grid #6464-04-917084

Location: 2048 Route 44

Ms. Rubenstein reported that the file contains:

- An application to the ZBA dated 4/22/09
- Response from the DC Planning and Development Department: matter of local concern with extensive comments (original on file)
- Affidavit of publication in The Poughkeepsie Journal dated 1/21/10
- List of adjacent property owners who were notified of this hearing.
- Recommendation from the Pleasant Valley Planning Board: positive recommendation with comments regarding
 - Water
 - Septic
 - 100% expansion of SDS
 - parking and handicapped parking
 - DOT access
 - Site plan review by Planning Board is required if Use Variance is granted
- Response from Pleasant Valley Fire Advisory Board: no position

Mr. John Lulgjuraj, applicant, 41 Town Line Drive, Carmel, NY 10512, was present and was sworn in. He reported that he brought the property 4-5 years ago and bought the 24 residential units right next door that were shut down by the Health Department. He stated that there were environment problems with the 24 units. He stated that when he approached to buy these properties it showed the 24 units plus restaurant next door. He stated that that is the way the bank sold it to them. He stated that he came to Town Hall and looked at the taxes, which showed the 24 units and the property next door as a restaurant. Therefore, he stated that they thought they bought it as a use as a restaurant.

Mr. Lulgjuraj stated that they completed the 24 apartments, met all the Health Department's requirements with the water system and septic. He stated that he completed the whole renovation and were moving on to the next step to do the restaurant and that's when they were stopped by the Zoning Board. He stated that they did not realize that the permit had expired or that they needed new permits. He stated that the tax record shows that they are paying as a restaurant and they thought that they could just renovate it like they did with the 24 units next door.

Ms. Rubenstein asked when that building was last used as a restaurant. Mr. Lulgjuraj guessed that it was a few years before they bought it, but that he is not sure. Ms. Rubenstein asked if he has the exact date on that. Mr. Lulgjuraj stated that he does not.

Ms. Rubenstein noted that the application was made in April 2009 and asked why it was not acted upon at that time. Mr. Lulgjuraj stated that he wanted to do the 24 residential units first and then continue with the restaurant. He stated that he came to the Zoning Office in April and that the Town Moratorium stopped him.

Mr. Lulgjuraj guessed that the property has been a restaurant for 20-30-40 years with a studio apartment in the back. He stated that he's not going to do any changes, just to renovate the front with a new face, windows, door, and sidewalk and curb. He stated that he called the Health Department, spoke with Mr. Robins who told him that there is no issue with the septic and that there is an issue with the well. He stated that the Health Department told him that there needs to be a new well, that the existing well does not pass the Health Department codes. He stated that he called the NYS Department of Transportation for the access and that they told that he must fill out some forms and provide drawings. He stated that DOT told him that they would give him permission for two driveways – one in and one out – or one driveway in and out. He stated that it was not a big issue for the DOT.

Mr. Vogt stated that his one issue is to know when the property was last used as a restaurant. Mr. Maucher noted that the applicant says that it was many years. Mr. Lulgjuraj stated that he bought the property in 2005 and that it was a couple of years before that when it was closed down. Mr. Vogt suggested that it was 4-5 years before. He stated that it used to be called Mackey's Pub or Café or Luncheonette.

Mr. Lulgjuraj stated that it is not financially feasible to convert the property to one or two family dwelling. He stated that it would be easier to knock the property down or leave it as it is. He stated that it is an old building, that the bathrooms are situated for a restaurant, the kitchen is all equipped. Mr. Vogt stated that over the years the building has been many things. Mr. Lulgjuraj stated that he learned that it used to be a Chinese restaurant years ago.

Mr. Maucher asked what the total size of the lot is. Mr. Lulgjuraj stated that it is ½ acre located on the corner of Brown Road and Route 44.

Ms. Rubenstein asked if Mr. Lulgjuraj has any documentation for the ZBA on any attempts to use the property within the confines of what's permitted by the Zoning Code. Mr. Lulgjuraj asked for clarification of the question. Ms. Rubenstein explained that the ZBA is required to find that this property cannot give him a reasonable return when used under any of the permitted uses per the Zoning Code. She stated that the Board has not heard anything from him that tells anything financial about its use.

Mr. Lulgjuraj stated that he bought the property for \$900,000 for both properties. Ms. Rubenstein asked if it was two lots. Mr. Lulgjuraj stated that it was two lots, that the apartments are on a separate lot and that there are separate deeds for the lots. He stated that he paid \$900,000 in 2005 and pumped in 20% to buy the place. He also stated that he borrowed \$600,000 to renovate the apartments and got a mortgage of \$1,375,000 – the mortgage plus 20% that he had to put down. He stated that he sold them in February for \$1,600,000 – so that he barely made and all his money is in the property where the restaurant is. He stated that the way it is now it is now worth \$40,000-\$60,000 – ½ acre of no usage. Ms. Rubenstein stated that there are some permitted uses per the Zoning Code and asked if he has looked at the Code. Mr. Lulgjuraj stated that he thought he had permission to use it as a restaurant, worth at least a few \$100,000 – at least the money that he put down to purchase it and the time that he spent – 4 years – renovating the apartments next door. He stated that he's losing a lot of money on that property.

Ms. Rubenstein asked if Mr. Lulgjuraj is aware that the Town Board just rezoned the whole town. Mr. Lulgjuraj responded yes. Ms. Rubenstein asked if he spoke to the Town Board about this property at the time they were doing the rezoning. Mr. Lulgjuraj stated that they were aware of it.

Mr. Maucher asked what the zoning is now for that property. Ms. Rubenstein responded Rural Residential and pointed to the Schedule of Permitted Uses at the end of the Zoning Code, which documents what is permitted in that zone.

Mr. Lulgjuraj stated that the property is now worth nothing, that for the past 5 years he's been paying the mortgage on it and the taxes. He stated that he's been a little backed up on the taxes for the past few years because he's losing on the property – that it's not producing anything for him. He stated that he's hoping to get the permits so that he can get his money out of the property and open a restaurant. He stated that he's been doing restaurant business for 25 years. He stated that he knows how the restaurant business works. He stated that he thinks the tax office should have notified him that there would be a problem with the permits. He stated that, for us that we come from the city, we don't take it too seriously these little small towns and these little regulations that they have. He stated that he wants to express himself and that these are the facts and now there's trouble.

Public Hearing was opened.

Ms. Penny Hickman, 2045 Route 44, Pleasant Valley, NY 12569, was sworn in. She stated that she's lived there for 37 years. She stated that she lives across the street from the applicant's property.

Ms. Hickman stated that she knows the applicant as John and that he has been an extremely conscientious purchaser of the two parcels. She stated that she would go over or he would come over and explain to her what he was doing. She stated that the apartments were a disaster and that John came into the community and was willing to expend his efforts and his money to try and clean them up. She stated that he did an exemplary job and made many statements to the fact that when he was finished with the residential units he would move on to the restaurant. She stated that the property has always been Rural Residential the entire time that she's lived there. She also stated that there have been restaurants on that property for the entire time that she's lived there and before that. She remembered that it was Chick

Haven and Flo's Country Kitchen – that there have been restaurants until the last one closed up. She stated that John purchased the parcels with the intent of reopening the restaurant.

Ms. Hickman stated she can attest to Mr. Lulgjuraj's character – that he has been very deliberate in doing the best job that he could for the community. She stated that he speaks about how much he likes Pleasant Valley and had thoughts of relocating his family here.

Ms. Hickman stated that the property across from her is becoming more of a disaster every day and someone needs to do something. She stated that she has apartments and moved in with apartments and she stated that she can tell the Board that the applicant will never recover his money making an apartment across the street.

Mr. Vogt asked Ms. Hickman if she remembers when Mackey's was open. Ms. Hickman stated that she was trying to remember but that she's been having more and more "intellectual intermissions" each year and does not remember. She stated that there was someone there before Mackey's for a short time.

Mr. Kish asked about the apartment in the back. Mr. Lulgjuraj stated that there is a studio in the back and the restaurant in the front – that there's a bathroom and a shower. He stated that he wants to leave it the way that it is and fixed it up – clean it up, paint it, new floors, new windows outside and a door and maybe the sidewalk and curbing. He stated that it is falling apart.

Mr. Maucher asked if he expects to open a restaurant himself. Mr. Lulgjuraj stated that he will open the restaurant, himself. He stated that he's been in the restaurant business for 25 years and got out of it and went into real estate and that went so-so.

Ms. Hickman stated that when it was a Chinese restaurant, some of the people were living there. She stated that it was a mixed use at the time, which should not have been allowed.

Public Hearing was closed.

2. **APPEAL #950 – BJORK – AREA VARIANCE**
3. **APPEAL #951 – BJORK – AREA VARIANCE**
Grid #6363-04-543092
Location: 15 McGill Road

Mr. Maucher asked for clarification on what variance is being requested on Appeal #951 and why anything would be required on a property that predates Zoning Code and flood control. Ms. Rubenstein suggested that this will be the first question asked of the applicant after she reads into the record the contents of the file.

Ms. Rubenstein reported that these files contain:

- Applications for #950 and #951 dated 12/18/09
- Response from Dutchess County Planning and Development Department: local concern for both Appeals.
- Affidavit of publication of the two Appeals in The Poughkeepsie Journal dated 1/21/10
- List of adjacent property owners who were notified of this hearing
- Planning Board referral to the ZBA on Appeal #950: positive recommendation

- Planning Board referral to ZBA on Appeal #951: positive recommendation with request that ZBA consider the following:
 - Title search is done to confirm that there is a deeded right-of-way that provides access to the site and that there are the necessary provisions for maintenance so that emergency vehicles can access the property
 - That the ZBA consider passing a recommendation to the Town Board that the appropriate fines be levied against the applicant.

- Referral from the Fire Advisory Board on both Appeals: no position
- Title Search dated 1/26/10
- Letter from Bruce Donegan, Zoning Administrator, dated 12/30/09: building permit denied.
- Flood plain permit application

Wade Silkworth, engineer for the applicant, 6 Maple Road, Poughkeepsie, NY 12601, was present and was sworn in. He stated that this is a 1.1 acre parcel located on McGill Road. He stated that frontage is on Route 44 and the rear of the site butts up on Wappingers Creek. He stated that the site is in the SFH zone. He stated that the existing home is located towards the rear of the site and is 657 sq. ft. and was constructed before zoning. He stated that the applicant, Mr. Bjork, had hired an architect to put on an addition who did the plans. He explained that he was brought onto the project after the building permits were denied. He stated that he came up with a flood proofing plan for the addition of the structure.

Mr. Silkworth stated that Appeal #950 is for a variance from Section 98-57 of the new Code to expand the structure over 50%. He stated that the addition to the structure is not going to have a negative impact on the neighborhood. He stated that the existing home is 657 sq. ft.; with the addition the home totals 1188 sq. ft., which is below average by today's standards. He stated that the surrounding residential area is not affected – that the addition is to the rear of the home. He stated that the old zoning code required that homes in that zone had a minimum square footage of 1000 sq. ft. He summarized that this Appeal is to expand the structure over 50%.

Mr. Silkworth stated that Appeal #951 is from Section 50-17 of the Town Code and is a variance from flood proofing the existing structure. He explained that this section of the Town Code states that construction in a flood plain with the first floor before the base flood elevation must be flood proofed. He stated that they would like to flood proof the addition to the home but not have to go through the extra expense of flood proofing the existing portion of the home. He explained that they are asking the variance to not flood proof the existing home. He stated that the home has been there for many, many years and has survived floods as it stands and they would not like to go through the extra cost. He stated that the home, without the addition, would be subject to flooding anyway.

Mr. Silkworth noted that the Planning Board recommended the title search, which they provided. He stated that the title search states that the 20' right-of-way that provides access to this parcel also has a maintenance agreement in place. He explained that Philip Fern, who lives at the end of the road, is responsible for the maintenance and upkeep of the road and the applicant, Mr. Bjork, has right-of-way rights over that property.

Ms. Rubenstein asked for clarification on which part of the structure is pre-existing and which part is the addition. Mr. Silkworth pointed out on the map the addition to the home, which is towards Wappingers Creek.

Ms. Rubenstein asked when this was built.

Mr. Douglas Bjork, 111 West Lake Drive, Lindenhurst, NY 11757, was present and sworn in. He stated that the addition was built in summer of 2008. Ms. Rubenstein asked for clarification on when he applied for a building permit. Mr. Bjork stated that he applied for the permit after the addition was built. Ms. Rubenstein asked how that happened. Mr. Bjork stated that he got a notice stating that he had to.

Mr. Vogt asked if Mr. Bjork contracted with anyone for plans on the property. Mr. Bjork stated that he did but not locally. Mr. Vogt stated that every town on Long Island that he knows of requires permits. Mr. Bjork stated that the plans were drawn up after the fact. Mr. Vogt stated that he built a home with no plans – that he did an addition with no planning. Mr. Bjork stated that he had a sketch that he worked off of and then he had the plans done afterwards. Mr. Gerstner asked Mr. Bjork whether he thought he needed any permits. Mr. Bjork stated that he did not think about it at the time – that it was a mistake on his part and poor judgment. Mr. Gerstner stated that even if Mr. Bjork didn't know that he needed permits, an engineer or architect should have been able to tell him that he needed permits and it's surprising that he got as far as he did without permits.

Ms. Rubenstein asked for clarification on what the appeal is for – to not flood proof the original structure but just flood proof the addition and the deck. Mr. Bjork responded yes.

Board members discussed the authority by which the ZBA rules on appeals to Section 50 of the Town Code. Ms. Rubenstein asked to see the entire Chapter 50 – copies were made of specific pages in Chapter 50 and distributed to ZBA members, the applicant, and Mr. Donegan and Mr. Feldweg.

Mr. Maucher asked whether the applicant intends to live in the house or rent it out. Mr. Bjork stated that the house has been in his family for 30+ years – it belonged to his uncle. He stated that he likes this area and would like to retire here. Ms. Rubenstein asked if the property is titled to Mr. Bjork. Mr. Bjork responded yes. Ms. Rubenstein asked when he took title. Mr. Bjork stated 2007 – that his uncle passed away in 2006.

Mr. Maucher asked for clarification on what variance he's asking for. Mr. Silkworth explained that because Mr. Bjork expanded beyond the permitted 50% it brings everything in – that the entire structure, therefore, must be flood proofed.

Ms. Rubenstein asked whether the title search reveals when the house was built. Mr. Bjork stated that there are two things – one was in the 1930's and there was something else in the 1950's. He stated that he does not know if it was renovated in the 1950's. Ms. Rubenstein asked for confirmation that the house was built before Zoning. Board members and Mr. Silkworth reviewed the title search and found confirmation in the Parcel Access Report from the Dutchess County website that the house at 15 McGill Road was built in 1950.

Mr. Kish asked who owns the road. Mr. Bjork stated that nobody owns the road, that there is a maintenance agreement (included in the title search) that identifies Phil Fern as responsible

for maintenance of the road. Mr. Silkworth stated that Mr. Fern owns 3 parcels at the end of the road and that he thinks Mr. Bjork's parcel is included in that original road maintenance agreement because he owns a 10' strip of road frontage on Route 44. However, Mr. Silkworth stated that Mr. Bjork's deed grants him a right-of-way over the road that Mr. Fern is responsible for maintaining.

Mr. Vogt asked why, if Mr. Bjork is spending all the money and time in the addition which will be built to the flood plain standard, he would not want to protect the whole property and bring it up to current standards. He noted that it is a large investment. Mr. Silkworth explained that the techniques that are employed in the flood proofing are wet flood proofing techniques, which involves building the structure and the sub-structure out of flood resistant materials such as pressure-treated lumber. He stated that to re-do the existing portion of the home it would require getting down to the sub-floor, the floor joists, and basically to rebuild the entire structure. Mr. Vogt stated that he thought that's what the applicant was doing when he redid the whole home. Mr. Silkworth stated that he did redo a lot and did employ a lot of the techniques throughout the existing portion of the house. He stated that Mr. Bjork did replace the sheet rock with water resistant sheet rock and have the entire house blown with the blown insulation, which is flood resistant material. He stated that all of the electrical circuits below the flood elevation will be on ground fault interrupters. Also, the main electrical service will be raised above the flood elevation, as well. Mr. Silkworth explained that those are some of the features in the existing portion of the home that he is fixing, but that they did not want to redo the entire substructure to eliminate a complete rebuild.

Mr. Vogt asked, then, what plans they have to show the Board of the addition, not the exposed deck, what has been done and whether it is meeting current flood hazard codes. Mr. Bjork stated that some of the stuff is not being redone in the existing home and there's some stuff that is not completely done yet. Mr. Vogt stated that he's asking about the substructure – the footings, the piers, the pylons. Mr. Silkworth stated that Mr. Bjork built the house before he brought Mr. Silkworth onto the project. He stated that the piers, the footings, the floor joists that Mr. Bjork used are all of the correct materials. Mr. Vogt asked how the Board and the Building Inspector will know that. Mr. Bjork stated that they all can be seen. Mr. Vogt stated that he's looked at the deck portion and all were visible but that it is not visible for the rest of the home. Mr. Silkworth stated that if they can get the proper permits the Building Inspector will conduct the proper inspections. Mr. Vogt asked if they will dig everything up to show what is down there. Ms. Czech pointed out that that is not the ZBA's responsibility. Mr. Vogt stated that he's asking for a variance to avoid that. Ms. Czech stated that the Building Department will conduct the inspections.

Board members reviewed the section of the Town Code that deals with variance from the Flood Damage Prevention Code. Ms. Rubenstein stated that the procedure is unique to this Section. She suggested that this is not an area variance but is, rather, a variance from the requirements of the Flood Damage Prevention Code. Further, she stated that the information provided by the applicant does not address the topics that the Board is charged to consider and to base its decision upon.

Ms. Rubenstein invited Mr. Feldweg to explain this application. Mr. Feldweg stated that he had made the initial contact with Mr. Bjork and has spent a lot of time working on this particular problem. He explained that this is not a Use Variance and he identified it as an

Area Variance. He explained that this is a physical condition rather than a use – therefore, it qualified as an area variance. He stated that the use is not in question at all.

Mr. Feldweg explained that Appeal #950 is simple – the addition is greater than 50% of the original building. Under the NYS Uniform Fire and Building Code, he stated that any addition that is 51% in excess of the original structure in a flood zone has to be brought up to flood proof standards – and that is the second Appeal #951. He stated, however, that the addition must be flood proofed and that this is not variable by this Board.

Mr. Feldweg reported on a meeting that was held at Town Hall with Bob Smith, who is one of the head people on the NYS Fire and Building Code, Roger Lee the PV Building Inspector, and Bruce Donegan PV Zoning Administrator. He stated that they talked about what has to be done and what is the best way for Mr. Bjork to address this and try to comply with the Code. He stated that they concluded at this meeting that the appropriate way to address Mr. Bjork's situation is via the two appeals that are before the ZBA now. He stated that the new building must be flood proofed and that is under the purview of the PV Building Inspector – it is his job to ensure that everything in that building, to his satisfaction, has been flood proofed. He stated that there may be some destructive inspections to ascertain what the footings are or whatever he requires. He stated that it will be handled by the PV Building Department and signed off on with a Flood Plain Development Permit. He stated that the Zoning Board cannot vary that piece of the process.

Ms. Rubenstein stated that it is clear in the Section of Chapter 50 of the Town Code the list of items that the ZBA must consider – there are 12 things that the Board must consider. She stated that she does not have the information needed to consider those items.

Mr. Feldweg stated that this property is not in the 100' buffer zone of the creek and, further, that his property is not in the major floodway of the creek. Rather, he stated that the property is in a ponding area of the creek – that when the creek floods, his property is in a backwater area where the water puddles or ponds as the creek rises. He stated that his opinion is that it is in a flood zone but is not in an area that would be subjected to a lot of material moving downstream to cause damage to some of the other structures downstream, which is something that must be considered in a flood zone. He stated that all of this entered into the conversation with Mr. Smith from the Building Codes Department. He suggested that the Board members should visit the site and talk with some of the neighbors who live in the area. He stated that that area does not get bashed with logs and other things floating down through there. He stated that it is a ponding area.

Public Hearing was opened.

Mr. Craig Silkworth, 1372 Route 44, Pleasant Valley, NY 12569, was present and was sworn in. He stated that he's here for moral support for Mr. Bjork and that he owns the adjoining property next door. He explained that his back yard is even with Mr. Bjork's house. He stated that Mr. Feldweg is 100% correct – that the area is a pond when the creek floods. He stated that they have been there 32 years and have seen it flood quite a few times. Also, he stated that Mr. Bjork's improvements to the house make the whole neighborhood better. He stated that originally it was a little bungalow and now, with the addition, it is more of a normal looking home.

Mr. Silkworth stated that he does not have any other comments and is available to answer any other questions.

Ms. Rubenstein stated that the Board has to assess and consider the 12 items listed in Section 50-20 and that she has not heard enough information that addresses those items to be able to make a decision tonight.

Mr. Gerstner asked if there was an improvement to the septic system and whether a new well was required for the addition. Mr. Silkworth stated that the existing well is working and functioning properly and the septic does not need to be upsized due to the fact that the structure remains as a one-bedroom home.

Ms. Rubenstein asked if any Board members have questions pertaining to the 12 listed items in Section 50-20. Mr. Vogt noted that #12 (costs to local governments, etc.) pertains to this Town. Ms. Czech stated that she does not see any that she needs additional information on. No other Board member spoke.

Public Hearing closed.

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DISCUSSION

1. APPEAL #942 – ZANI CORPORATION – USE VARIANCE
Grid #6464-04-917084
Location: 2048 Route 44

Ms. Czech noted that the Planning Board provided a positive recommendation and a neighbor spoke this evening saying that it would be a great improvement. She stated that the loss of his return is a great loss and stated that there's not much he could do with it. Mr. Vogt and Mr. Maucher stated that there are a number of uses that are permitted in the zone – Rural Residential.

Ms. Rubenstein stated that her two issues are, one, that the Town Board just rezoned. She stated that she asked the applicant whether the Town Board knew about this property and his issue, and that the applicant responded yes and they rezoned anyway. Ms. Czech stated that she was on the Comprehensive Plan Committee and that residents spoke at the public hearings about issues with their particular properties, but the Town went forward with the plan. Ms. Rubenstein stated that the case law is clear that to grant a Use Variance you need dollars and cents proof, that it is not adequate to simply state how much he spent to buy the property and that he cannot use it for anything else. She stated that case law is clear and that he did not give the Board enough information. She stated that he is essentially asking for a rezoning.

Board members discussed at some length whether this constitutes a rezoning. Ms. Rubenstein stated that a Use Variance is a rezoning because the variance runs with the land. Ms. Czech stated that the ZBA cannot rezone, that this is a special use. Ms. Rubenstein stated that it is not a special use but rather is a Use Variance, which essentially is a rezoning. Ms. Czech stated that it is not rezoning because, then, it would be spot zoning. Mr. Maucher pointed out that the applicant is asking for a Use Variance. Ms. Rubenstein stated that the Use Variance runs with the land and is not a Special Use Permit, which expires after a certain point if you don't use it. Further, she stated that it does not become a non-

conforming use if you stop using it, it continues to be that use. Board members asked if there was a Special Use Permit on this property. Ms. Rubenstein suggested that there was no Special Use Permit but, rather, it was a non-conforming use. Ms. Czech asked if conditions can be placed on this property to restrict the use to this owner of the property. Ms. Rubenstein stated that that cannot be done because a Use Variance is a variance of the use that is permitted in the Zone. She stated that, by its very nature, you cannot make it a Special Use Permit.

Mr. Maucher asked if the Board is saying that this is a non-conforming use. Ms. Rubenstein responded no – that it was a non-conforming use that pre-dated zoning and once it stopped being used as a non-conforming use, it reverts to what the Code permits in that Zone. Board members reviewed the permitted uses in the Rural Residential Zone and recognized that what he wants to use it as – a restaurant – is not permitted in the Zone. Therefore, the only option for the applicant is to appeal for a Use Variance, which would run with the land. Ms. Czech stated unless it lapses. Ms. Rubenstein stated that there is no lapse on a Use Variance – that a Use Variance is a permanent commitment. She stated that the case law is clear that you are making a permanent change.

Mr. Maucher asked which section applies to this appeal. Ms. Rubenstein explained that the Schedule of Permitted Uses details which uses are permitted. Mr. Maucher asked what he is requesting a variance from. Board members reviewed Section 98-95 – the Powers of the ZBA and discussed how the applicant would provide adequate documentation of his inability to realize a reasonable return from the property for any of the permitted uses.

Mr. Maucher asked, again, what section of the Code the applicant is requesting a variance from. Ms. Dickerson offered that it is from the Schedule of Permitted Uses. Ms. Rubenstein read from Section 98-95, which details the information that he applicant must provide to the ZBA. Ms. Rubenstein and Mr. Vogt agreed that the applicant failed to provide the required information and only stated that he wants to use the property as a restaurant and based his request solely on the fact that it has been a restaurant in the past.

Mr. Maucher pointed out that it will be very difficult for the applicant to demonstrate that he cannot realize a reasonable return on the property when used in any of the permitted uses. Board members agreed with that statement and pointed out that that is why it is very difficult to be granted a Use Variance. Ms. Rubenstein stated that case law states “reasonable return.” Board members discussed the applicant’s assertion that it would be cost prohibitive to convert the property into a residence.

Mr. Kish asked if the Board is saying that it cannot legally keep it as a restaurant. Ms. Rubenstein stated that she does not think there is sufficient evidence in the record to support that decision right now. She stated that it is possible that the Board could reach out to the applicant and advise him to get professional help and read the Code and see if he could provide the required documentation to support the grant of the Use Variance. Mr. Vogt agreed that right now he does not meet the requirements. Ms. Rubenstein stated that she tried to ask the applicant for the required information and he failed to provide it. Further, she pointed out that if the Board wants to grant the Use Variance as a restaurant, then it becomes a permanent fixture and is no longer a non-conforming use and is not a Special Use Permit – it is a permanent fixture. Mr. Kish pointed out that the ZBA’s task is to determine whether it can be a restaurant or not.

Board members agreed to adjourn the decision on this appeal and to let the applicant know that he can request that the board re-open the Public Hearing in order to consider additional documentation that he submits.

Mr. Vogt: **MOTION TO ADJOURN DECISION ON THIS APPEAL AND NOTIFY THE APPLICANT THAT HE MAY REQUEST TO RE-OPEN THE PUBLIC HEARING TO PROVIDE DOCUMENTATION TO DEMONSTRATE HARDSHIP**

SECONDED BY H. CZECH

VOTE TAKEN AND APPROVED 6-0-0

Board members took note that they have 60 days to make their decision on this Appeal.

2. **APPEAL #950 – BJORK – AREA VARIANCE**
3. **APPEAL #951 – BJORK – AREA VARIANCE**
Grid #6363-04-543092
Location: 15 McGill Road

Mr. Kish stated that the house has been there since 1950 and it has not washed away yet and there's nothing that has floated downstream to wash it away. He stated that his thinking on waterproofing the original structure is that there's no need. Mr. Gerstner pointed out that the old structure is behind the new addition and farther away from the area that floods. Mr. Kish stated that the new addition has to comply with the building codes. He also noted that the backyard is clean and that there's nothing down there. He noted that there have been enough floods over the years – that if it were going to wash away it would have done so already.

Mr. Gerstner asked how Mr. Bjork gets out of the house in a flood. Mr. Bjork noted he does not live there, but that it does not flood in the front of his house – that it's always in the back.

Board members noted that it's been there for 60 years and hasn't been damaged up to now and that it's a decent risk. Ms. Czech stated that it hasn't even eroded the foundation – it's still there and is solid.

Appeal #950 – Expansion: Board members agreed that they are not thrilled that the applicant built the house without checking the Code or getting a building permit. Board members agreed that one of the options is to require the applicant to demolish the addition. Mr. Maucher pointed out that historically the ZBA has been willing to forgive an honest mistake, but the Board does not want to feel that the applicant is trying to get permission and forgiveness and it was an intentional act. Mr. Vogt stated that anyone today knows that you need a permit to build – on Long Island you put a screw on the outside of the house and you need a permit.

Board members discussed the mechanism for imposing a fine on the applicant and determined that there is no way to require the applicant to pay a fine.

Mr. Vogt stated that he has an issue with the fact that the applicant proceeded without a permit and built his addition without the permission.

Mr. Gerstner stated that it has been built and is “water over the flood plain” and suggested that the Board should move on.

Mr. Feldweg suggested that if the Board grants the variance for the expansion then the applicant can proceed with building permit process and inspection process for the addition and can complete what he needs to complete. He stated that the variance for the flood proofing on the existing structure is a secondary venture. Otherwise there would be a delay of a month. Mr. Bjork stated that the delay is not a problem for him.

Ms. Rubenstein stated that she wants to proceed tonight on the Appeal #950 – Expansion but to address Appeal #951 – Flood Proofing the old structure at the next ZBA meeting. She stated that her rationale is that she wants to make sure that the Board addresses what’s in the Town Code Section because the next time something comes before the Board she wants to make sure that the Board has correctly addressed this situation. Mr. Vogt stated that it creates a template to follow in the future.

Board members concurred that they need to review Chapter 50 of the Town Code in its entirety in order to decide on Appeal #951 – Flood Proofing.

Ms. Czech read into the record the resolution (original on file) to grant the variance for Appeal #950 – Expansion.

Ms. Czech: **MOTION TO GRANT THE AREA VARIANCE FOR THE EXPANSION**

SECONDED BY B. MAUCHER

Discussion: Board discussed the Planning Board’s request that the ZBA to be comfortable that the property has adequate access to Route 44 per the title search. Ms. Rubenstein stated that she does not think it matters to the ZBA whether they have a maintenance agreement because that house is already there and, further, it is not relevant to whether they can expand their non-conforming use. She stated that she does not think it is the ZBA’s obligation to obtain that information because the ZBA does not need to know that information.

VOTE TAKEN AND APPROVED 6-0-0

Board members agreed to adjourn the decision on Appeal #951 – Flood Proofing.

Mr. Vogt: **MOTION TO ADJOURN A DECISION ON APPEAL #951 – FLOOD PROOFING; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 6-0-0**

4. MINUTES

MOTION TO APPROVE THE MINUTES OF THE 11/19/09 MEETING AS WRITTEN WAS CARRIED UNANIMOUSLY.

5. MISCELLANEOUS

Mr. Maucher pointed out that Section 98-96A the new Code requires that every appeal or application shall refer to the specific provision of the chapter involved. He stated that he spent a lot of time reviewing the wrong part of the Code with reference to these appeals. Ms.

Rubenstein underscored the fact that everyone is using the new Code and it will be helpful to provide as much information as possible.

Meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the January 28, 2010, 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 4, 2010

The regularly scheduled February 25, 2010 meeting of the Pleasant Valley Zoning Board of Appeals was postponed to March 4, 2010 due to inclement weather. This meeting took place on March 4, 2010, 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
 Steve Kish
 Tim Gerstner
 Ron Vogt

Absent: Lisa Rubenstein
 Helene Czech

Also present: Jim Nelson, Attorney for the ZBA
 Bruce Donegan, Zoning Administrator
 Ed Feldweg, Deputy Zoning Administrator

1. **MINUTES**

Minutes of the 1/28/2010 were unanimously approved as written

2. **APPEAL #951 – BJORK – AREA VARIANCE – FLOOD DAMAGE PREVENTION**

Grid #6363-04-543092

Location: 15 McGill Road

Mr. Wade Silkworth, engineer for the applicant, and Mr. Douglas Bjork, applicant, were present.

Mr. Dunn read into the record (original on file) a memorandum dated 3/4/10 from the ZBA's attorney, Mr. James Nelson, that lays out the facts on the application and the rationale for requiring a Special Use Permit on this project.

Mr. Silkworth, previously sworn in, reported that he and Mr. Bjork have discussed this situation with Mr. Nelson and that they concede that they must comply with the requirement to apply for a Special Use Permit.

3. **APPEAL #952 - WILLIAMS LUMBER – AREA VARIANCE – FRONT YARD SETBACK**

Grid #6564-529886 & 6564-02-507860

Location: 2424 Route 44

Mr. Dunn reported that this is an appeal for an area variance from the setbacks for the existing and proposed buildings on the site. He stated that the file contains:

- Planning Board referral to the ZBA: positive recommendation with comments (original on file)
- Fire Advisory Board referral to ZBA: no position

- List of adjacent property owners who have been notified of this hearing
- Affidavit of publication in The Poughkeepsie Journal
- Referral from the Dutchess County Department of Planning with comments: the Board should rely on its own review of the facts for its decision

4. **APPEAL #953 - WILLIAMS LUMBER – AREA VARIANCE –
MAXIMUM BUILDING FOOTPRINT
Grid #6564-529886 & 6564-02-507860
Location: 2424 Route 44**

Mr. Dunn reported that this is an appeal for an area variance from the Schedule of Area and Bulk Requirements – Maximum Building Footprint per Non-Residential Establishment. Code requirement in this Mixed Use Commercial Zone is 10,000 sq. ft. The existing building is 23,016 sq. ft. The total floor area of existing and proposed buildings will be 34,405 sq. ft. Applicant is requesting a variance of 24,405 sq. ft. from the maximum permitted building footprint.

Mr. Dunn reported that the file contains:

- Fire Advisory Board: no position
- DC Department of Planning: matter of local concern
- Referral from the Planning Board: positive recommendation with comments
- List of adjacent property owners who have been notified of this hearing
- Affidavit of publication in The Poughkeepsie Journal

Mr. Larry Boudreau, Chazen Companies, 21 Fox Street, Poughkeepsie, NY, was sworn in for both Appeal #952 and #953. Mr. Boudreau reported that he is project manager for both William Lumber appeals. He reported that this project was before the Planning Board for discussion on 12/8/09. Subsequent to that meeting, they filed their application for these Area Variances and met with the Planning Board again on 2/9/10 for recommendation to the ZBA's meeting tonight.

Mr. Boudreau stated that the site is the old Miracle Ford site, located east of the Taconic on Route 44. He stated that the additional buildings total a little over 10,000 sq. ft. and are labeled A, B, C, and D. He stated that building D is the guard house. He noted that the site is currently paved and was for vehicle storage for Miracle Ford.

Appeal #952: Mr. Boudreau pointed out that the setbacks for the existing and proposed buildings were permitted under the old Code. However, he stated that with the new Code they are required to apply for this area variance for the setbacks from the required 15' to 30' – intent is to create a hamlet corridor. He displayed a site plan that shows the existing and proposed buildings and shows how the setbacks for all the buildings are consistent with other properties and buildings along the corridor. He emphasized that the additional buildings are for storage and one is the guard house.

Appeal #953: Mr. Boudreau explained that, again, under the previous Code this footprint was permitted. However, under the new Code the maximum footprint is changed and that the existing building is at 23,000 sq. ft. He stated that the intent is to occupy the existing building with the home center and use the proposed buildings as storage. Mr. Boudreau stated that they presented all this information to the Planning Board and worked with that

Board and their comments on the site plan which they addressed from a layout standpoint and are represented on the current site plan displayed at this meeting tonight.

Mr. Dunn asked whether they are trying to keep some kind of consistency with the 79' setback. Mr. Boudreau responded yes and explained that by doing that the Planning Board asked them to remove a row of parking in the front – removing impervious surface and replacing it with landscaping in the front to provide screening. He stated that the Planning Board liked the idea of removing the asphalt and introducing some landscaping and screening. He pointed out other areas on the map where they also added landscaping and reconfigured and removed some parking.

Mr. Boudreau displayed a GIS plan that looks at the entire corridor from Route 82 to the Taconic and pointed out the setbacks throughout that area. He pointed out how the Williams Lumber project site fits with the other structures in that corridor.

Mr. Gerstner stated that he likes the proposed setback because the increased setbacks will help with visibility on the curve of the road back to the Taconic,. Mr. Vogt agreed. Mr. Dunn also noted that the landscaping will be an attractive addition.

Mr. Maucher asked about the plan to combine the two parcels. Mr. Boudreau stated that the parcels are under contract at this time and that combining them will be part of the contingency agreement at the close of the deal. He stated that they will be joined at that time. Mr. Maucher asked about the reason for that. Mr. Boudreau stated that he's not involved in that, that the attorneys are involved. He stated that as part of this application the parcels have to be joined. Mr. Maucher asked for more clarification. Mr. Boudreau explained that for planning, if they were not joined, then it would be considered a separate lot and storage would not be compliant in the Zoning District. He noted that the storage buildings are accessory to the principal use.

Mr. Maucher explained that the reason he's asking is that according to the Code they are allowed to have 10,000 sq. ft. and if they maintained two separate lots, then they would be allowed to have 10,000 sq. ft. on each lot instead of 10,000 sq. ft. on one combined lot. He stated that that would greatly reduce their request for a variance. Again, he asked why they think they have to combine the two lots into one. Mr. Boudreau pointed out that the home center is the principal use and the storage buildings are accessory to that use. He stated that if the lots are not combined, then the second lot with the storage buildings would have to stand on its own. Mr. Maucher asked how that is a problem. Mr. Boudreau stated that the way they understand the new Code, the use on that lot as a storage facility would not be in compliance. Mr. Maucher asked what section of the Code applies. Ms. Dickerson indicated the Schedule of Permitted Uses.

Mr. Kish asked what Mr. Maucher's concern is – whether the question is that the variance requirement would be different if it were used as two parcels instead of one. Mr. Maucher responded yes – that they would be permitted 10,000 sq. ft. on each parcel – if the two were combined into one then they are limited to 10,000 sq. ft. total. He stated that it would be a much smaller variance that they would have to request.

Mr. Boudreau explained again that if the two parcels are combined, then the proposed new buildings will be used for storage will be accessory use to the existing building – the Home

and Building Center. He stated that in the Mixed Commercial Zoning District warehousing or storage is not permitted.

Mr. Dunn asked Mr. Feldweg if he could clarify this situation. Mr. Feldweg state that he has not apprised himself about this project, that Mr. Donegan has been involved. Mr. Dunn asked Mr. Donegan for his input; Mr. Donegan had nothing to say.

Mr. Vogt stated that his interpretation is that the proposed storage buildings are an accessory use – an incidental storage.

Public Hearing was opened.

Ms. Dolores Benedict, 732 Bear Gulch Road, Richmondville, NY 12149, was sworn in. She stated that she owns the property directly across the road from the 3 proposed buildings. She stated that she thinks the Williams property is unique in the area because the surrounding properties are zoned residential. She stated that the Code as it stands preserves the residential use of that land and if they add these commercial buildings it constitutes a taking. She stated that the Town is taking the use of her property; that there is no way she can sell it as a residential zone. She stated that it was supposed to be addressed during the comprehensive planning phase, but that for some reasons it stayed the way it was. She stated that if there were even a small commercial use across from her property, it would be OK. But that giving this variance and adding more buildings on the property, it will make it even more non-conforming. She stated that adding 24,000 sq. ft. in buildings covering that lot is destroying the residential character of her property across the road and impacting the residential property behind it.

Ms. Benedict stated that she has no problem with the variance for the setbacks. However, she objects to the area variance for the increased footprint on the lots.

Mr. Boudreau stated that the existing building is 23,000 sq. ft. and, therefore, the requested variance is for 10,000 sq. ft. He pointed out that in the old Code this was totally compliant. He stated that by moving the buildings back they have a big buffer, they have removed some impervious surface, that they have landscaping and a fence going up there. He stated that they will create a nice character along the corridor.

Mr. Benedict recommended that, if the ZBA grants the variance, the Board take into consideration the restrictions that were imposed on PV Ford under the original Special Use Permit regarding lighting, no loud speakers, no external music.

Mr. Vogt asked about the height of the buildings. Mr. Cruikshank, 191 West Road, Pleasant Valley, from Kirchhoff Consigli, was sworn in and stated that the buildings will not exceed 24'. He stated that they are pole structures for storage of lumber and lumber racks – they will be barn-like structures.

Public Hearing was closed.

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DISCUSSION

APPEAL #952 – WILLIAMS – SETBACK – AREA VARIANCE

APPEAL #953 – WILLIAMS – FOOTPRINT – AREA VARIANCE

Mr. Maucher stated that he has a concern about the properties being two lots at this time and questions which lot the variances will be granted on. Mr. Kish stated that the resolution would have to stipulate that it is a single lot. Mr. Maucher again asked which lot the variance is granted on and proposed that the lots be combined before the variances are granted. Mr. Kish stated that the solution is to stipulate that the two lots must be combined into one to get the approval for the variance. Mr. Maucher stated that his preference would be that they combine the lots before the variance is granted. Mr. Gerstner stated that they are not going to combine the lots until they buy the property, and they are not going to buy the property until the variance is granted. It is a Catch 22. Mr. Vogt and Mr. Gerstner stated that the resolution will list both lot numbers and be made conditional on those lots being combined. Mr. Dunn pointed out that both lots have the same address.

Board members reviewed the Code and discussed options for granting the variances. Board members discussed the failsafe that the variances, if granted contingent on the lots being combined, are void if the lots are not combined.

Mr. Sandy Williams, 158 Burger Road, Rhinebeck, NY was sworn in. He stated that he is ok with the resolution to grant the variances with the condition that the two lots will be combined into one. Mr. Williams stated that they will not purchase the property without this approval and that the owner will not combine the lots unless Williams Lumber buys them. Mr. Williams asked that the Board expedite this application.

APPEAL #952 - SETBACKS

Mr. Dunn: **MOTION TO GRANT THE APPEAL #952 - SETBACKS**

Mr. Dunn read into the record (original on file) the resolution to grant Appeal #952 – Area Variance for setbacks on existing and proposed buildings with conditions:

1. that the two lots 6564-02-529886 and 6564-02-507860 will be combined
2. recommendation that the Planning Board review the Special Use Permit that was granted to Miracle Ford for applicable restrictions

SECONDED T. GERSTNER

VOTE TAKEN AND APPROVED 5-0-0

APPEAL #953 – FOOTPRINT

Mr. Dunn: **MOTION TO GRANT THE APPEAL #953 – FOOTPRINT**

Mr. Dunn read into the record (original on file) the resolution to grant Appeal #953 – Area Variance for maximum footprint on the site with conditions:

1. that the two lots 6564-02-529886 and 6564-02-507860 will be combined
2. recommendation that the Planning Board review the Special Use Permit that was granted to Miracle Ford for applicable restrictions

SECONDED T. GERSTNER

VOTE TAKEN AND APPROVED 5-0-0

MISCELLANEOUS

Mr. Maucher noted that the Planning Board's recommendation for approval also stated that this was not intended to apply to this kind of a property – only to the hamlet areas. He asked if it will be possible to update the Code in order to make that more clear. He pointed out that if the Code does not reflect the intention of the committee that worked on the revised Code, then the Code needs to be changed to reflect their intentions. Mr. Dunn stated that he pointed out that it is not in a hamlet center and that this was written for the hamlet center. Mr. Maucher recommended that if things only apply to certain districts, then that should be clearly stated in the Code. Mr. Dunn stated that he will bring that up. He also stated that this Code is still a draft. Ms. Dickerson stated that, although the copies of the Code that the Board members received is entitled DRAFT, it is the final version that was approved by the Town Board and adopted by NYS on 12/23/10. Mr. Maucher asked if a version will be printed without all the cross outs. Ms. Dickerson stated that General Code will produce a clear copy and that she regularly asks the Town Clerk for updates on when it will be available.

Mr. Maucher asked about Zani Corporation that was supposed to be on the agenda tonight. Ms. Dickerson stated that he was not scheduled to be on the ZBA agenda until April and explained that the applicant is trying to decide how and whether to proceed with his appeal for a Use Variance.

Mr. Dunn introduced Sharon Wilhelm who is rejoining the ZBA as first alternate. He noted that she used to be the chair of the ZBA.

Board members asked what appeals will be on the March agenda. Ms. Dickerson stated that there are two appeals: (1) Beckwith Interpretation and (2) Swanson – Amended Special Use Permit. She explained that Mr. Swanson wants two businesses in his building. She stated that Mr. Swanson has been told that the Planning Board does not want to see him until he knows what the other business will be because how do you plan for it. ZBA members stated that they also need to know what the second business will be. Board members asked Ms. Dickerson to inform Mr. Swanson that the ZBA also must know what the second business will be.

Mr. Gerstner asked that the Section of the Code that is being appealed be listed on the application form. Ms. Dickerson pointed out where that appears on the application form.

Meeting unanimously adjourned at 9:05 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the March 4, 2010, 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 25, 2010

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on March 25, 2010 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
 Steve Kish
 Tim Gerstner
 Lisa Rubenstein
 Ron Vogt

Absent: Helene Czech
 Sharon Wilhelm

Also present: Ed Feldweg, Deputy Zoning Administrator

1. **SWANSON – SPECIAL USE PERMIT – AMENDED – APPEAL #955**
 Grid#6463-01-296827
 Location: 1777 Route 44

Mr. Maucher recused himself from this appeal.

Mr. Dunn reported that Mr. Matt Swanson is applying to amend his Special Use Permit in order to have a second business in his proposed building along with his tree business. Also, he stated that the file contains:

- Zoning Administrator's Administrative Decision that states that the applicant must appeal to amend his Special Use Permit to include a second business on the site.
- Application with the EAF
- Referral from the Planning Board: positive recommendation with requirement that the application come to the Planning Board for site plan review and approval
- Referral from the FAB: no position as it is uniquely a matter for the ZBA. FAB also requests that the application be referred to them for review during the site plan review process.
- List of adjacent property owners who have been notified of this hearing.
- Affidavit of publication in The Poughkeepsie Journal dated 3/18/10
- Referral from the Dutchess County Department of Planning: matter of local concern with comments. County's concern is with regard to what the second business use would be.
- Letter from Matt Swanson, applicant, stating that his intention is to rent a portion of his proposed building to a business similar to his own – plumber or electrician or other trades person – whose business is conducted off site and whose office is on site. His letter states that the second business will not be retail and customers may infrequently come to the site for consultations.

Mr. Matt Swanson, applicant, was sworn in. He explained that he needs this to make this work, that financially he cannot support it on his own. He stated that he definitely wants to keep it neat, to keep the equipment to the back and to keep it private. He stated that he wants to have a nice front landscaped out. He stated that the Planning Board asked to have the

parking on the sides. He noted that he can now move the building closer to the street, which is what the Planning Board initially wanted.

Mr. Swanson stated that he's looking for a business similar to his, that he will be selective on whom he takes in. He stated that he's talking to a couple of people, that there was a sign company what was interested – that they do most of their work off site although they do their production work on site. He stated that that is not confirmed yet.

Mr. Dunn asked for confirmation that Mr. Swanson is talking about a business where very few clients would come on site. Mr. Swanson responded yes.

Mr. Swanson stated that there will be two separate entrances; both companies will have their own bathroom. He stated that depending on how much space they require and what the rent will be, they will create an interior wall to break up the building. He stated that the outside of the building has not changed, that the landscaping has not changed.

Mr. Kish asked when the applicant wants to start. Mr. Swanson stated that he wants to have the building closed in by winter. He stated that he will have to meet the Board of Health requirements.

Ms. Rubenstein asked if his plan is to have two signs. Mr. Swanson stated that it depends on what the Planning Board will permit. He suggested two small signs on either side of the building.

Ms. Rubenstein noted that the ZBA has not reviewed a Special Use Permit under the new Code yet and pointed out that Section 98-73D states that the ZBA may require that a Special Use Permit be renewed periodically.

Mr. Feldweg pointed out that the applicant is asking to amend a Special Use Permit that was granted under the old Code and that the amendment would fall under the new Code. Ms. Rubenstein stated that the applicant is making an application for a new Special Use Permit and now the Special Use Permit will contain two special uses that are not in conformity with the Code. Mr. Feldweg stated that the amendment would replace, in its entirety, the original Special Use Permit. Ms. Rubenstein concurred and stated that the applicant is not getting two Special Use Permits on the same property; rather he is amending his original approval. She stated that after talking with Jim Nelson, attorney for the ZBA, there is nothing in the new Code that grandfathers anything. Therefore, she stated that the applicant is asking for something new and that if the ZBA denied this application, the applicant would still have his old existing Special Use Permit. She stated that she does not think that the ZBA is revoking his existing Special Use Permit but that the Board must apply the new Code to this current appeal.

Ms. Rubenstein asked to review the resolution that granted the original Special Use Permit in 2008. Ms. Dickerson provided the file and the minutes from that ZBA meeting. Ms. Rubenstein reviewed the documents and did not find them to be helpful.

Mr. Feldweg stated that there are some Special Use Permits under the new Code that mandate granting them on a renewal basis and one of them is accessory housing. He stated that it was his understanding when the new Code was drafted that the fact that they can be renewed was an option for the Board. Specifically, he recalled that if someone puts on an accessory apartment for their parents and then the parents no longer need it, the Board wanted the

ability to discontinue the Special Use Permit so that it could not become a rental property. He explained that it gives the Board the option to put a time limit on a Special Use Permit when appropriate. Mr. Vogt stated that under the old Code it was not possible to put a time limit on a Special Use Permit. Mr. Feldweg concurred and stated that the Special Use Permit went with the property.

Board discussed Section 98-73 – Effect of Special Use Permit. Ms. Rubenstein pointed out that the property is probably a suitable location for the proposed use. Mr. Vogt stated that if the second business is of the type where the work will be done off site, then he does not have a problem with tailoring to the new Code this permitted use along with Mr. Swanson’s business. Ms. Rubenstein stated that the resolution can include conditions, such as no retail use. Mr. Swanson stated that he does not want the traffic, that there is not enough room with the building and storage for equipment and employee parking to accommodate retail customers. He stated that if he has a consultation with somebody, or someone needs to fill out some paperwork or pay a bill, he feels that that reasonable. He stated that he does not want someone selling plumbing supplies out of the store. Ms. Rubenstein stated that the issue is extent of storage of vehicles and equipment. Board members agreed that they don’t want to have 20 trucks. Mr. Vogt pointed out that it would be back to what there is on the site now with the current environmental issues.

Mr. Dunn pointed out that there will be some traffic on the site with the trucks leaving in the morning. Mr. Vogt stated that there is no problem unless the plumber wants to start selling retail out of that building or an electrician selling lighting fixtures out of the building because that would generate the traffic and you want to stay away from that.

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

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DISCUSSION

1. SWANSON – SPECIAL USE PERMIT – AMENDED – APPEAL #955
Grid#6463-01-296827
Location: 1777 Route 44

Mr. Dunn read into the record the short form EAF.

Mr. Dunn: **MOTION FOR SEQRA NEGATIVE DECLARATION AS PROPOSED ACTION WILL NOT RESULT IN SIGIFICANT ADVERSE ENVIRONMENTAL IMPACT; SECONDED BY S. KISH; VOTE TAKEN AND APPROVED 5-0-0 (Mr. Maucher is recused.)**

Ms. Rubenstein pointed out that 98-70A requires that the ZBA determine that no Special Use Permit shall “be injurious to the neighborhood or otherwise detrimental to the public welfare.”

Further, Ms. Rubenstein pointed out that the 98-70B requires the ZBA to consider a list of 13 topics when reviewing an application for a Special Use Permit. She explained that the Board must review these topics from the perspective of the use for which the Special Use Permit is being applied. She stated that the ZBA must determine whether this use will interfere with the development in the particular zoning district. Board discussed the 13 topics.

Ms. Rubenstein stated that the Board was in favor of getting rid of the storage of junk cars and now must consider the question of whether two uses on the site, given certain conditions, would interfere with the overall use of that area in that zone. Board members discussed and concurred that it probably would not. Mr. Vogt pointed out that there is one neighbor and then a side street. He stated that on the other side is the cemetery.

Ms. Rubenstein and Board members reviewed the permitted uses in the Medium Density Residential Zone. They noted that there are no business uses permitted in this zone, which is what makes this a significant decision.

Mr. Gerstner asked if Mr. Swanson is building two buildings. Mr. Swanson clarified that he is building only one building, two entrances, with storage in the back. He stated that the dimensions have not changed. Mr. Dunn stated that they will be adding some square footage but not a lot. Ms. Rubenstein stated that the Board does not want a lot of vehicles stored there. Mr. Swanson stated that some of the trucks will be on one side; and depending on how much of the building he rents to a second business, he stated that they will have at least 3 bays where 3 trucks will be parked inside at night. He stated that he plans on having a privacy fence and all the stuff will go to the back and nothing will be stored in the front or on the sides. Ms. Rubenstein suggested that, as a condition of approval, a privacy screen be required so that no vehicles are stored on the side or the front. She mentioned that the Board would not want 10 plumber's trucks parked in front of the building. Mr. Swanson stated that that is an issue for the Planning Board and for site plan.

Ms. Rubenstein stated that it is also an important consideration by the ZBA when it determines if it is an appropriate use for the property and that the condition could be that a lot of things are not stored outside. She stated that her concern is that she would not want to create something on the site that impairs the adjoining property owners' property value and makes it impossible for them to sell their house because nobody wants to move next door to that. She stated that that is the major concern. She also pointed out that this use is not more objectionable to the neighbors because no one is present to attend the Public Hearing or to object.

Board discussed the items in Section 98-70B and determined that the general objectives specified in the Code have been taken into account.

Section 98-70B(1): Board members agreed that they have discussed this (see above).

Section 98-70B(2): Board did not think it would impair the value as long as the site is properly screened.

Section 98-70B(3): Board unable to know about traffic access yet because it is a site plan issue. Mr. Vogt stated that the NYS has already given approval because the ingress and egress already exists. Ms. Rubenstein noted that it is not a terrible location for traffic access.

Section 98-70B(4): Board agreed that there is adequate space for parking.

Section 98-70B(5): Board agreed that the site can be screened and noted that it is a site plan issue.

Section 98-70B(6): Board agreed that there is ready access for emergency vehicles. The Fire Advisory Board will review the plans.

Section 98-70B(7): Board determined that this does not apply and noted that no member of the public attended the hearing or objected to the project.

Section 98-70B(8): Board agreed that this is a site plan issue.

Section 98-70B(9): Board agreed that this is a site plan issue.

Section 98-70B(10): Board agreed that this does not apply because the Board does not have information on this.

Section 98-70B(11): Board agreed that no additional conditions are appropriate.

Section 98-70B(12): No requirements are being waived.

Section 98-70B(13): Site access has been allowed. The applicant posted the yellow sign on the property.

Board discussed the conditions:

- Appropriate screening of the trucks and equipment from approved uses in the Zone.

Ms. Rubenstein read into the record the **RESOLUTION TO GRANT:**

Now therefore be it resolved that the Zoning Board of Appeals finds that the Special Use Permit is reasonably necessary for the public health or general interest and welfare, and

The Special Use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities, and

The neighborhood and character of surrounding properties are reasonably safeguarded provided that the site plan includes appropriate screening, and

The second use in the building would have no retail component and would be the type of use as outlined on the applicant's letter dated 3/15/10 and made a part of this resolution (see attached Exhibit A), and

The use of the premises for the Special Use will not cause traffic congestion or create a traffic hazard provided it is the use outlined in the applicant's letter dated 3/15/10, and

Be it resolved that for the following reasons the applicant is hereby granted the Special Use Permit in accordance with Section 98-68 of the Town Code for an Amended Special Use Permit for two businesses on the site, and

Conditioned on the following:

- Payment of all fees
- Receipt of appropriate Federal, State, and Local permits
- Site Plan approval
- Appropriate screening from approved uses in the Zone
- Compliance with the terms of the applicant's letter dated 3/15/10

Applicant must comply with all other conditions of the Zoning Code, with special note of the expiration of Special Use Permits if not enacted.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 5-0-0

T. Gerstner – Yes

B. Maucher – Recused

L. Rubenstein – Yes

H. Czech – Absent

R. Vogt- Yes

S. Kish – Yes

J. Dunn - yes

2. MINUTES

Minutes of the 3/4/10 ZBA meeting were unanimously approved as corrected.

3. RESOLUTION FORMAT

Board discussed changes to the newly drafted Special Use Permit resolution form.

Meeting unanimously adjourned at 8:45 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the March 25, 2010, 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 22, 2010

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on April 22, 2010 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
 Bob Maucher
 Steve Kish
 Tim Gerstner
 Lisa Rubenstein
 Ron Vogt
 Helene Czech
 Sharon Wilhelm

Also present: Jim Nelson, Attorney to the ZBA
 Bruce Donegan, Zoning Administrator
 Ed Feldweg, Deputy Zoning Administrator

Announcement: Mr. Feldweg, Deputy Zoning Administrator, announced with some glee that the esteemed Chair of the Pleasant Valley Zoning Board, John Dunn, is celebrating a milestone birthday today. All present applauded and offered condolences and words of advice for years of continuing prosperity and good health.

1. **APPEAL #951 – BJORK – AREA VARIANCE – PUBLIC HEARING**
 Grid #6363-04-543092
 Location: 15 McGill Road

Mr. Dunn announced that decision on this appeal was adjourned from January 2010 ZBA meeting. He stated that this is an application for the existing house for a variance from Town Code Chapter 50 – Flood Damage Prevention. He stated that the Public Hearing on this appeal will be reopened at this meeting.

Mr. Dunn noted that the file contains:

- Affidavit of republication in The Poughkeepsie Journal dated 4/14/10
- List of adjacent property owners who have been notified of this meeting.

Mr. Dunn noted that the other contents of the file were read into the record at the January 2010 ZBA meeting.

Mr. Wade Silkworth, Engineer, Silkworth Engineering, was sworn in. He stated that it has come to light that this project falls under the new PV Zoning Code and must apply for a variance from Town Code Chapter 50 – Flood Damage Prevention – to not flood proof the existing structure. He understands that they also need a Special Use Permit to expand over 50%.

Mr. Silkworth stated that he would like to read into the record the letter that he submitted dated 2/4/10 that addresses the 12 items that the Zoning Board may consider when making a decision on these applications for the Variance and the Special Use Permit. Ms. Rubenstein requested that Mr. Silkworth not read the letter as it is already part of the record and that each of the Board members has received a copy. She invited Mr. Silkworth to comment on

anything that he would like to comment upon. Mr. Silkworth stated that all of his answers were straight forward and that he is available to answer any of the Board's questions or concerns.

Ms. Rubenstein asked for clarification on the area variance that was previously granted on this property. Board members provided that the area variance was granted on Appeal 950.

Ms. Czech asked whether the old portion of the house – the pre-existing portion of the house – whether it has ever flooded. Mr. Silkworth stated that it has flooded in the basement area – that the basement and part of the first floor is below the flood plain elevation. However, he stated that even during the worst floods, only the basement area to the height of about 4' has been flooded, which was in the worst case instance. He stated that it has never reached the first floor of the home.

Ms. Czech asked whether flood proofing would prevent flooding – what would the difference be if it were flood proofed. Mr. Silkworth responded that flood proofing the existing home would entail replacing materials within the home such as the framing with pressure treated lumber, water and mold resistant sheet rock, different insulation. He stated that it does not prevent the flooding but would reduce the damage to the materials.

Mr. Kish asked if the basement is flood proofed – whether it is up to Code. Mr. Silkworth stated that it is up to Code – that it is a normal concrete basement and that there's not much else that one can do other than to pump the water out when it comes in.

Ms. Rubenstein clarified that the Public Hearing on this appeal was closed at the January 2010 ZBA meeting and that notice of tonight's re-opening of the Public Hearing was re-publicized in The Poughkeepsie Journal and adjacent property owners were notified.

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

2. **BJORK – SPECIAL USE PERMIT – APPEAL #956 – PUBLIC HEARING**
Grid#6363-04-543-092
Location: 15 McGill Road

Mr. Dunn announced that the applicant is also seeking a Special Use Permit for the same property under Zoning Code 98-57(c) – Expansion of a Structure Utilized for a Non-conforming Use. He stated that the applicant has expanded his house at 15 McGill Road greater than the permitted 50% of the original structure and prior to applying for or receiving a building permit.

Mr. Dunn stated that the file contains:

- Application
- Affidavit of publication in The Poughkeepsie Journal dated 4/14/10
- Referral from the Planning Board: positive recommendation with the note that this application does not require a site plan review because site plan review is not required for single family residence.
- Referral from the Fire Advisory Board: no position
- List of adjacent property owners who have been notified
- Referral from the DC Department of Planning: matter of local concern

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

Mr. Wade Silkworth was present and was previously sworn in. He stated that he had nothing additional to report as the issues for this appeal are the same as for the Area Variance appeal.

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DISCUSSION

Mr. Nelson submitted two documents to the Board:

- Flood Damage Prevention Variance for Appeal #951 per Article 50 in the PV Town Code.
- Copies of the pertinent pages from the Town Code that details the topics that the Board must consider under Article 50.

1. APPEAL #951 – BJORK – AREA VARIANCE – FLOOD PREVENTION

Mr. Vogt stated that his concerns are for the impact of flooding on the old part of the house that has not been brought up to Code. He expressed concern for the potential for the growth of mold and for the health of the occupants. He stated that he believes the old part of the house should comply with the new Code.

Mr. Kish asked whether that is the responsibility of the ZBA to make that decision. Ms. Rubenstein stated that it is now. Ms. Czech stated that the Code requires that certain materials are used, but it is not the Board's responsibility to tell people to change how they built their house or how to remediate mold. She stated that any flood will cause mold regardless of what materials are used – new or old. Ms. Rubenstein stated that that is true except that when an applicant is asking for a variance, the Board must look at all the factors.

Ms. Rubenstein stated that given the fact that this structure has been in existence for a very long period of time and if the Board will permit the addition of greater than 50%, she does not see any reason to retroactively make the applicant retrofit the entire house. She stated that she understands and respects Mr. Vogt's concerns and noted that that is why the Code requires certain building materials, but that this situation would retroactively require the applicant to redo his entire house. She also noted that the applicant would not have to be before the ZBA if he had expanded less than 50% of the original size and had applied for and received a building permit prior to building. Ms. Czech stated that he should not be retroactively penalized. Mr. Dunn stated that NYS will make him bring the addition up to Code.

Mr. Kish asked how long the existing portion of the house has been there. Mr. Dunn stated that it predates Zoning.

Mr. Dunn agrees that it would be onerous for the ZBA to force the applicant to bring everything up to Code and that it would constitute undue hardship on the applicant.

Ms. Rubenstein considered the alternative – if someone has a non-conforming use and wants to expand that use and they go ahead and expand it, then the ZBA is not going to make them bring the old part up to Code. Ms. Czech stated not necessarily. Ms. Rubenstein stated that if there is a way to distinguish this application, the Board needs to be thinking about that because there may be occasions in the future that come up where the Board may not want to take the same position. She pointed out that each application is precedential for the next one. Ms. Czech stated that the circumstances will not be exactly the same but that in this case the house has been there 60 years and has flooded and is still standing and has been remediated.

She stated that she does not think the Board will be setting a precedent with this application. Ms. Rubenstein pointed out that the case law says that everything this Board does is precedential for the next thing this Board does and, therefore, the Board must be very careful.

Mr. Kish stated that if someone wanted to put an addition on their house and got the appropriate permits to do it and passed all the Zoning and Planning regulations, then it should not be a problem to meet the new Code. He stated that if someone didn't get the permits on an existing house, then it would be similar to this project. He stated that it is because it is residential and he rebuilt the house without the appropriate permits and now the Board will tell the applicant either to comply or tear the place down. He stated that he does not think the Board is inclined to tell him to tear the place down in order to comply with the rules.

Ms. Rubenstein asked if this is because it is a non-conforming structure – what if it were a commercial structure that applied. She stated that she wants the Board to think this through. Mr. Kish stated that the difference to him would be whether or not someone had built without the appropriate permits, such as this. He stated that if someone got the appropriate permits, then it would be a different situation and the Board would argue it differently. But given that he did not get the permits and he already built it, the Board now has consider that it is non-conforming and to decide what to do with it.

Mr. Dunn pointed out that if the addition were less than 50% of the existing structure and if he had applied for and received a building permit, then this application would not exist. He stated, however, that the fact that the addition is larger than 50% requires the application. Mr. Kish stated that this would be a different discussion if the applicant had applied before he added the addition – then it would be a different discussion.

Mr. Dunn stated that, considering the welfare of the occupants of the home, trying to cut down on any growth of mold, one of the tests is the financial hardship on the applicant. In this case, he stated that trying to retrofit the portion of the existing house would make it a bit onerous on the applicant. Ms. Rubenstein stated that the Board is, at this time, taking into account the burden on the owner. She stated that she wants the Board to determine the significant issues in this case and that it is important to do this as groundwork for any future similar appeals. Ms. Czech stated that if someone were to come to the ZBA wanting to expand greater than 50%, the Board would make sure that if it were granted they would do all their flood prevention and be to Code on the expansion and not on the house – not the original structure but on the expansion. Ms. Rubenstein stated that that is not what the Code says. Mr. Maucher stated that the ZBA takes into account all of the facts in the situation. Ms. Rubenstein agreed and stated that she is trying to nail down what facts the Board thinks are significant. Mr. Maucher stated that no two applications will be identical. Ms. Rubenstein agreed but pointed out that the Board must consider the same factors for each application regardless of whether they are different – there are some basic principals that the Board must agree it will consider. Ms. Czech suggested that undue hardship is one.

Mr. Nelson submitted copies to the Board of Town Code Section 50-20(D) – the 12 factors that the Code requires the Board to consider. He noted that each application will be different, but that it is a good idea to discuss the facts that relate to each application because it is based on those facts that future applications will be distinguished from the present application.

Board members reviewed the 12 factors of Section 50-20(D). Mr. Gerstner pointed out that #3 – mold and #9 – fire are the only ones that are relevant. Ms. Rubenstein agreed that

because this application is for an existing structure other of the 12 factors don't apply, and the issue of the water front location already exists.

Mr. Dunn read into the record (original on file) the **RESOLUTION TO GRANT THE FLOOD DAMAGE PREVENTION VARIANCE ON THE EXISTING STRUCTURE AT 15 MCGILL ROAD, GRID #6363-04-543092**

SECONDED BY L. RUBENSTEIN

VOTE TAKEN AND APPROVED 7-0-0

Mr. Maucher pointed out that Section 50-21(G) requires that a letter be sent to the applicant advising him that "the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor elevation." Ms. Dickerson stated that she will generate the letter for Mr. Dunn's signature.

2. APPEAL #956 – BJORK – AREA VARIANCE – SPECIAL USE PERMIT

Mr. Dunn asked Board members if they wished to discuss this appeal. Board members agreed that there was nothing further to discuss.

Mr. Dunn read into the record (original on file) the EAF.

Ms. Rubenstein: **MOTION TO ADOPT A NEGATIVE DECLARATION UNDER SEQR; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 7-0-0**

Mr. Dunn read into the record (original on file) the **RESOLUTION TO GRANT THE SPECIAL USE PERMIT FOR THE EXPANSION OF A RESIDENTIAL STRUCUTRE AT 15 MCGILL ROAD, GRID #6363-04-543092**

SECONDED BY T. GERSTNER

VOTE TAKEN AND APPROVED 7-0-0

3. MINUTES

Minutes of the 3/25/10 ZBA meeting were unanimously accepted as corrected.

Meeting unanimously adjourned at 8:55 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the April 22, 2010, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

May 27, 2010

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on May 27, 2010 at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:31 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Steve Kish
 Tim Gerstner
 Lisa Rubenstein
 Ron Vogt
 Helene Czech

Also present: Bruce Donegan, Zoning Administrator
 Sharon Wilhelm, Alt.

1. MINUTES

Minutes of the 4/22/10 ZBA meeting were unanimously accepted as written.

2. MCLAUGHLIN – SPECIAL USE PERMIT – APPEAL #958

Grid #6463-03-306490

Location: 693 Traver Road

Mr. Dunn reported that this is an application to construct a 1 bedroom accessory apartment onto the existing house to accommodate the applicant's aging parents. Code Section 98-15(B) requires a Special Use Permit for this project. He stated that the file contains:

- Referral from DC Department of Planning and Development: matter of local concern
- Affidavit of publication in The Poughkeepsie Journal dated 5/20/10
- Referral from Fire Advisory Board: no position – matter for the ZBA
- Referral from Planning Board: positive recommendation – site plan review required if Special Use Permit is approved
- Certification that adjacent property owners were notified of this hearing

Ms. Dawn and Mr. Joseph McLaughlin, 693 Traver Road, Pleasant Valley, NY were present and were sworn in.

Ms. Rubenstein asked whether their existing lot is 1.11 acres. Ms. McLaughlin responded yes. Ms. Rubenstein asked whether the measurements on the submitted plot plan are accurate. Mr. McLaughlin responded yes, that they had the property surveyed last year. Ms. Rubenstein asked if the numbers on the plot plan are based on that survey. Mr. McLaughlin responded yes. Ms. Rubenstein asked if the McLaughlins will continue to live in the house. Mr. & Mrs. McLaughlin responded yes. Ms. Rubenstein asked if they will have one bedroom in the accessory unit with a separate kitchen and bathroom. Mrs. McLaughlin responded yes.

Ms. Rubenstein explained that she is going through the statute and making sure that their proposal complying with the Code. She noted that 98-15(B)12 provides that a Special Use Permit for an accessory dwelling shall expire 2 years from the date of issuance and can be renewed pursuant to re-inspection and recertification of the accessory dwelling.

Board members discussed the process by which the renewal would be tracked and conducted. Board concluded that no reapplication will be required; that the Zoning office will track the expiration date; and the Zoning Administrator will conduct an inspection and will recertify. Ms. Dickerson reported that the rationale for the 2 year expiration is so that if the original need for the apartment no longer exists, then the apartment cannot become a rental unit.

Ms. Rubenstein suggested that, if this permit is approved, a copy of 98-15(b)12 be attached to the permit and that the applicant be required to acknowledge that they have reviewed it and understand the Code requirement.

Board members also concurred that there is application fee for the renewal of this permit. However, discussion ensued that there may be an inspection/recertification fee at that time.

Ms. Rubenstein asked the applicants if they were aware that the Special Use Permit terminates if they sell the property or if they no longer live there. She pointed out that they cannot move out and leave their parents living there with renters in the existing house. The applicants stated that they understand this and have no intention of leaving.

Ms. Rubenstein asked if the water supply is potable and that there is an adequate flow. Ms. McLaughlin stated that they have municipal water.

Ms. Rubenstein stated that they have to get approval from the DC Department of Health. Ms. McLaughlin stated that they already have received approval. Mr. Dunn noted that the letter from DOH is in the file and states that the applicants must increase the size of their leach fields. Ms. McLaughlin concurred and added that they also must increase the tank.

Mr. Maucher asked if there will be a separate outside entrance to the accessory apartment. Ms. McLaughlin responded yes and stated that there is also accessible from the interior of the house.

Mr. Dunn explained that the recertification is to determine whether the approved use still exists and that if something should happen to their parents, they would not be permitted to rent the apartment. The McLaughlins confirmed that they understand this restriction.

Ms. Rubenstein asked if the applicant has received a copy of the applicable section of the Code. Mrs. McLaughlin responded yes.

Mr. Donegan stated that this is the first application of this type and that the Zoning Office will track and will recertify. He noted that other towns permit these accessory apartments to be rented out after the permitted use expires or is no longer needed. Ms. Rubenstein noted that the PV Code does not permit rental.

Public Hearing opened. No member of the public spoke. **Public Hearing closed.**

Mr. Dunn read into the record Part II of the EAF.

Mr. Dunn: **MOTION FOR NEGATIVE DECLARATION UNDER SEQR; SECONDED T. GERSTNER; VOTE TAKEN AND APPROVED 7-0-0**

Ms. Rubenstein noted that the Code permits a maximum of 6 of these accessory apartments and asked how the Zoning Office will track them. Ms. Dickerson stated that the Office will

create a mechanism and she noted that Mr. Daly, who is in the audience, is also applying for an accessory apartment. She pointed out that he needs an Area Variance as well as the Special Use Permit – the Area Variance is because his apartment, which exists and is 880 sq. ft., exceeds the permitted maximum square footage of 650 sq. ft.

Mr. Vogt read into the record the resolution to grant the Special Use Permit (copy on file).

Mr. Vogt: **MOTION TO GRANT THE SPECIAL USE PERMIT WITH THE FOLLOWING CONDITIONS:**

- **APPLICANT SHALL FOLLOW ALL REGULATIONS IN 98-15**
- **PAYMENT OF APPLICABLE FEES**
- **SITE PLAN REVIEW BY PLANNING BOARD IS REQUIRED**
- **THIS SPECIAL USE PERMIT EXPIRES 5/26/12**

SECONDED BY L. RUBENSTEIN

Discussion: Ms. Rubenstein stated that the issues in this particular Special Use Permit application are whether the application complies with the specific provisions of the Code. She stated that there is nothing discretionary in this application and, therefore, the ZBA is only assessing whether this application complies with the Code. She noted that it is the correct size lot, it meets all the other setbacks, it will be owner occupied, and it is within the square footage restrictions. She suggested that we ask the ZBA attorney to provide the office with a revised resolution for this particular type of resolution. Further, she suggested that the following be added to the resolution: **the application complies with the specific provisions 98-15(B) based upon the applicant's testimony at the public hearing.** Board members concurred and Ms. Rubenstein made that addition to the resolution form.

Ms. Wilhelm noted that there were specific recommendations made by the DOH and asked if the ZBA must insert those into the resolution. Board members confirmed that those items will be addressed by the Planning Board during its site plan review.

VOTE TAKEN AND APPROVED 7-0-0

3. MISCELLANEOUS

Board members discussed elements of Beckwith's appeal for an Interpretation. Mr. Dunn noted that Ms. Dickerson will distribute copies of the tax roll from 2004 and from 2010. He pointed out that in 2004 it showed one space as being unusable space which is shown in 2010 as an apartment. Consequently, he stated that if that were the case then the applicant did exercise his variance then everything after that is a moot point. Ms. Rubenstein asked that a copy of the variance that was granted in the past to the Beckwith property be included in the packet to the ZBA for the meeting.

Ms. Rubenstein suggested that the Board members need to be thinking about what they will do when an applicant comes before the Board for a Special Use Permit for an accessory apartment after the apartment has been built. A Board member suggested that the ZBA should start requiring them to tear it down and return it to the original condition, as other towns do. Ms. Rubenstein stated that she litigated one in East Fishkill – a whole house that was built wrong – and they never got a Certificate of Occupancy and they never tore it down.

Meeting unanimously adjourned at 8:20 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the May 27, 2010, 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 24, 2010

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on June 24, 2010 at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:42 p.m.

Members present: John Dunn, Chair
 Steve Kish
 Tim Gerstner
 Lisa Rubenstein
 Ron Vogt
 Sharon Wilhelm, Alt.

Members absent: Bob Maucher
 Helene Czech

Also present: Jim Nelson, Attorney for the ZBA
 Bruce Donegan, Zoning Administrator
 Ed Feldweg, Deputy Zoning Administrator

Mr. Dunn read into the record the affidavit of publication in The Poughkeepsie Journal dated 6/21/10 announcing that all appeals that were scheduled for this meeting have been postponed or withdrawn by the applicants and that the only business before the Board is an attorney/client session which is not open to the public.

Board went into attorney/client session.

Meeting unanimously adjourned at 8:55 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the June 24, 2010, 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 22, 2010

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on July 22, 2010 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
 Steve Kish
 Bob Maucher
 Lisa Rubenstein
 Ron Vogt

Members absent: Tim Gerstner
 Helene Czech
 Sharon Wilhelm, Alt.

Also present: Bruce Donegan, Zoning Administrator

1. **MINUTES**

Ms. Rubenstein: **MOTION TO APPROVE THE 6/24/10 MINUTES AS WRITTEN; SECONDED BY S. KISH; VOTE TAKEN AND APPROVED 4-0-0**

Mr. Vogt: **MOTION TO APPROVE THE 5/27/10 MINUTES AS WRITTEN; SECONDED BY B. MAUCHER; VOTE TAKEN AND APPROVED 4-0-1 (Ms. Rubenstein abstained).**

2. **USA GAS, INC. – APPEAL #961**

Grid #6363-04-555243

Location: 1415 Route 44

Mr. Dunn stated that the file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 7/16/10
- Recommendation from the Planning Board: negative recommendation because there is no compelling reason to grant an area variance for a sign in a residential district
- Fire Advisory Board: no position as there are no fire or safety issues and is uniquely a matter for the ZBA
- List of adjacent property owners who were notified of this hearing
- Dutchess County Department of Planning and Development: matter of local concern with comments
- Zoning Administrator's Administrative Decision
- Documentation of other gas station signs

Mr. Ray Van Voorhis, 181 Church Street, Poughkeepsie, NY, and Mr. Avtar Singh, 350 Violet Avenue, Poughkeepsie, NY were present and were sworn in.

Mr. Van Voorhis stated that the previous monument sign was removed. Consequently, he stated that there is no signage at the site that identifies the brand or the price of the gas. He stated that this is a hardship for the business owner. He stated that the standard Citgo logo sign is 16 sq. ft. He stated that they need two areas for pricing – diesel and standard gas.

Mr. Van Voorhis submitted a rendering of the colors of the sign – blue and red.

Mr. Van Voorhis stated that the other gas station signs in Pleasant Valley all exceed the 16 sq. ft. sign – they are all substantially larger and are grandfathered. He pointed out a sign – Mystik Gas – that he stated was put in recently and is 36 sq. ft. at the top and has set the precedent. He stated that he's submitted 4-5 samples of signs within a mile of Mr. Singh's gas station – all signs are larger than the permissible 16 sq. ft.

Mr. Van Voorhis stated that they are looking for a low profile monument sign. He stated that they meet the word count and that they feel strongly that it is an appropriate sign so that drivers will be able to see the brand name and the price of the gas being offered.

Mr. Dunn asked if this is the only design that Citgo will accept. Mr. Van Voorhis responded no. Mr. Singh pointed out that he is only advertising 2 gas prices and that the other stations advertise many more things – food, etc. Mr. Dunn noted that while the other signs may be larger they also may have predated zoning and are in a different zoning district. He pointed out that this applicant's property is in a residential zone.

Mr. Vogt noted that they had a sign on the property but that they lost their pre-existing status by taking it down.

Mr. Dunn asked for a rendering of the sign and an indication of where the sign will be located on the site. Mr. Vogt agreed with County Planning's suggestion of a temporary vinyl sign with one side that meets Code at 16 sq. ft. and one side that is the size the applicant wants at 32 sq. ft. In this way, he pointed out that this gives Board members the opportunity to see what both options would look like.

Mr. Dunn asked about the option of putting a sign on the building. He explained that the ZBA is tasked with staying as close to Code as possible. He suggested that the Citgo logo be put on the building and the sign would just have the prices on it. Mr. Singh stated that if he puts the Citgo on the building no one can see it and they were told that they cannot put the sign on the canopy.

Ms. Rubenstein asked what the applicant thinks distinguishes his business from anyone else in that zoning district who wants to have twice the size of the sign code requirements – in what way they are different. Mr. Van Voorhis stated that they don't think all the information necessary for the gas station can fit on a 16 sq. ft. sign. Ms. Rubenstein asked whether it is the amount of information that they want to put on their sign that makes them different. Mr. Van Voorhis responded yes – and that he does not think the Code allows them to put the amount of information that they need on the sign.

Mr. Kish stated that his difficulty with this is that station is now non-competitive with the rest of the gas stations within the hamlet and within the Town of Pleasant Valley. He stated that it is now not possible to know what kind of gas this applicant sells or at what prices. However, he noted that all the other gas station signs are completely visible and asked whether all of the other gas stations should have the same sized sign. Ms. Rubenstein pointed out that this station is in a residential zone and suggested that this is an issue that should be held for the Board's discussion following the Public Hearing.

Mr. Vogt asked when the canopy was approved. Mr. Van Voorhis stated that it was 2004. Mr. Dunn asked Ms. Dickerson to pull the minutes on that approval and distribute to the

Board members. He stated that he would like to adjourn this appeal to next month to give the Board an opportunity to see a temporary sign in that area.

Mr. Donegan explained his administrative decision with regard to the Planning Board's suggestions for alternate configurations of the sign. Mr. Donegan explained that it was a consideration of what qualifies under the Code as a secondary sign, and that it was his opinion that the Planning Board's interpretation was not workable under the Code because it does not meet the definition of a secondary sign.

Public Hearing was opened.

No one spoke.

Public Hearing was adjourned.

Board members agreed to extend the submission deadline for this applicant for the next ZBA meeting to 8/2/10.

Mr. Kish asked if there is any legal objection on behalf of Citgo to reduce the size of the sign. Mr. Van Voorhis stated that they will check into that. Ms. Rubenstein stated that if they are going to submit a legal document to the Board, then that document will have to be reviewed by the ZBA's attorney. Ms. Dickerson stated that if such review is required, the applicant must deposit escrow monies with the Town by Monday 7/26/10. Mr. Van Voorhis stated that he will call Ms. Dickerson and let her know what they plan to do.

Next Steps: Mr. Dunn asked the applicant to:

- put up a vinyl sign – with 16 sq. ft. sign on one side and the 32 sq. ft. sign on the other side; and
- the applicant to take some photos and submit them for the Board's review.

3. APPEAL #962 – PALUMBO – AREA VARIANCE

Grid #6564-03-121392

Location: 30 Tinkertown Road

Mr. Dunn recited the details of the application – 15' area variance for an existing shed – and that the file contains:

- application
- list of adjacent property owners who have been notified of this hearing
- recommendation from the Planning Board: positive recommendation
- Dutchess County Planning: local concern
- Affidavit of publication in The Poughkeepsie Journal dated 7/16/10
- Memo from the Fire Advisory Board: no position as there are no fire or safety issues
- Memo from Ed Feldweg, Deputy Zoning Administrator, correcting the measurement of the distance from the shed to the property line. Correct distance is 7' 6"; therefore, the requested variance is 22' 6"

Also, it was noted that the shed was erected in 2001, not 2006 has had been listed in the application.

Ms. Vickie Palumbo, the applicant's daughter, 9 Chestnut Lane, Milton, NY and Mr. Randall Schad, 171 Sullivan Road, Esperance, NY were present and were sworn in.

Ms. Rubenstein pointed out that the file does not contain a notarized letter from the applicant, Joan Palumbo, giving permission for her daughter and Mr. Schad to represent her. Ms. Dickerson acknowledged this omission and apologized for not accurately advising the applicant on this point. Mr. Schad stated that he will have Mrs. Palumbo submit a notarized letter.

Mr. Dunn stated that the Board will hear this appeal tonight and adjourn it to next month, pending receipt of the letter from Mrs. Palumbo.

Mr. Schad explained that Mr. Joe Palumbo had the shed delivered in 2001. He stated that at that time Mr. Palumbo was not in good health but was doing well. He stated that Mr. Palumbo and the neighbor talked and they had no problem with it. He stated that Mr. Palumbo did not get a building permit at the time the shed was erected. Further, Mr. Schad stated that Mr. Palumbo was afflicted by a debilitating disease that made the shed his recreation area – that it was accessible to him while he was in a wheelchair. He stated that that is why the shed was erected in that location – it is accessible via blacktop.

Mr. Schad stated that Mrs. Palumbo is elderly now and is worried that she might have to move the shed and that she does not have the financial ability to do so. He also stated that Mrs. Palumbo had a fence put up which visually shields the shed.

Mr. Maucher asked what motivated them to seek a variance now. Ms. Schad stated that Mrs. Palumbo received her assessment forms in the mail and listed everything that exists on the property. He stated that Mrs. Palumbo was unaware that Mr. Palumbo had not gotten a building permit for the shed.

Public Hearing was opened.

Mr. Karl Sprauer, 36 Tinkertown Road, Pleasant Valley, NY was sworn in. He stated that he is the adjacent property owner and the reason why Mrs. Palumbo is asking for a variance is because he came to the Town because he wanted to put up a shed and was told that he needs to be 30' from the property line. He stated that it's not right that Mrs. Palumbo gets to have a shed one quarter of the distance required by zoning and he has to go 30'. He pointed out that whether they cut down the fence in the future, that shed will still be there – whether someone else buys the home, that shed will still be there. He stated that the electric going into the back of the shed does not have an expansion joint, which is an illegal procedure according to the National Electrical Code. He stated that he wonders what else is done incorrectly. He stated that it's not right that people just put up things and then come to get a permit after the fact. He stated that that is what he'll do, too.

Mr. Dunn stated that by Mr. Sprauer's being before ZBA and making that statement he is obviously giving evidence that he would anticipate doing something illegal.

Mr. Dunn stated that an existing structure that has been there for 6, 7, 8, 9 years is viewed differently from one that is put up by a person knowing they are in violation. He stated that if Mr. Sprauer wanted to put up a shed on his property and there was no place else feasible for it to be located, that's what variances are for. He stated that if he proposed to put up a shed that was not 30' off the property line, the Zoning Administrator would advise him to appeal to the ZBA for an Area Variance. He explained that the Board members would do a site visit and would ask if there was any place else on the property that he could put the shed that would be

in compliance with the Code. If there were such a location, then Mr. Dunn explained that the Board would be inclined not to grant the variance. If there wasn't another place, then he stated that the ZBA would probably be more inclined to grant the variance.

Mr. Vogt asked if Mr. Sprauer has any objections to that shed being that close to his property. Mr. Sprauer stated that it should be according to the Code. He stated that if he has to follow the Code, then others have to, too.

Mr. Vogt stated that he did not know that there was electric in the shed. Ms. Rubenstein stated that, with regard to the electric, even if the ZBA were to approve the Area Variance, the Board is not approving the electric. She stated that in the event they ever seek to sell the property, there will be some issues with selling if they don't bring the electric up to code. However, she explained that the ZBA does not issue violations and this Board's issue is to decide whether Mrs. Palumbo will be allowed to keep the shed in its current location or require it to be moved into compliance with the Code. She stated that the ZBA is not ignoring the fact that there might be a Code issue with the electricity, but it is not the ZBA's responsibility.

Mr. Sprauer stated that he understands that but stated that by the ZBA approving it the Board is giving them a Certificate of Use. Ms. Rubenstein stated that all the ZBA does is grant – or deny – an Area Variance – permission to have it closer to the property line. She stated that the ZBA does not grant Certificates of Occupancy – that is up to the Building Department. She explained that usually the appeal to the ZBA is the thing that people do first.

Mr. Sprauer stated that since it is already there and already constructed, the ZBA gives the final stamp. Ms. Rubenstein disagreed and stated that the ZBA is the first stamp. Mr. Sprauer asked whether the building inspector is going to do a site visit and check on it. Ms. Rubenstein stated that all the ZBA would be granting permission for the shed to be a certain distance from the property line and will not make any determination on whether the electric is up to Code. Further, she stated that the ZBA's decision regarding the Variance is not telling any other official how to do their job. She stated that if someone appealed to the ZBA to have their house close to the property line, that applicant would still have to comply with the Building Codes, the Health Department. She stated that if the Health Department determined that it would not be possible to put a septic on the site, it would not matter whether they could be close to the property line.

Ms. Rubenstein stated that people usually come to the ZBA first – they want to know if they can put something this close to the property line – before they go on and do all the other things they have to do.

Mr. Sprauer stated that he understands what Ms. Rubenstein is saying but that it applies to projects that have not already been built. He stated that this is really the last step on this situation because the property is already there. Ms. Rubenstein stated that the ZBA is not the last step. She also stated that when the owner goes to sell that house, no bank will lend any money on the house until everything on the site is in compliance with the codes. She stated that if they have received a Variance to be closer to the property line, that is only one of the things that they have to satisfy.

Mr. Sprauer stated that it is not his concern about when they go to sell the house. He stated that if you have an open building permit and you don't get a C.O. on it, you have fines and fees that must be paid along the way – that you cannot just wait till you go to sell the house.

Ms. Rubenstein asked if Mr. Sprauer has a particular issue on his own property that would require him to erect a structure such as a shed closer to the property line than the Code would allow. Mr. Sprauer stated that he has a fence that would prevent him from being 30' off the line in that area. He stated that like Mrs. Palumbo he has 2.5 acres and that he believes the Town would tell him that he could put a shed almost anywhere on his property and that it would not need to be that close to the property line.

Mr. Dunn asked Mr. Sprauer whether his main objection is the fact that the shed is too close to the property line and that he is not complaining about it because it is unsightly or every time he looks out his window he sees the shed and he does not want to look at it. Mr. Sprauer stated that his concern is when Mrs. Palumbo no longer lives there who will live there and what will they do because the shed will be there with a stamp of approval. He stated that they will be able to make it a chicken coop or anything that they want. Ms. Rubenstein stated that it is always going to be a shed. Mr. Sprauer stated that that fence can come down and then the shed is right there.

Mr. Maucher asked how close Mr. Sprauer's house is to the property line. Mr. Sprauer estimated that it is 80' to 90'.

Ms. Rubenstein asked if the shed is on a solid foundation. Mr. Schad stated that it is on skids and is 160 sq. ft. Mr. Kish asked if it is on a gravel bed. Mr. Schad responded yes. Mr. Vogt stated that it is movable. Mr. Schad agreed.

Ms. Rubenstein asked for an estimate of the cost to move it. Mr. Schad stated that he will research this. Ms. Rubenstein asked for confirmation that the shed has been there since 2001. Mr. Schad responded yes.

Mr. Maucher asked if there was a building permit for the shed. Mr. Schad responded no, that Mr. Palumbo did not get a building permit. Mr. Schad stated that it is movable but not easily.

Next Steps:

- Mr. Schad will provide a notarized letter from Mrs. Palumbo
- Public Hearing will be adjourned – applicants can attend if they wish
- Mr. Schad to provide estimates of costs to move the shed – deadline to submit extended to 8/2/10

Public Hearing adjourned.

**3. APPEAL #963 – ROSS – AREA VARIANCE
Grid #6463-02-780912
Location: 17 Rossway Road**

Mr. Dunn reported that this is an application for an area variance for an addition to a house. The Code requires 30' setback; the addition will be 15' from the side yard property line. Requested variance is 15'. Further, he noted that the file contains:

- Application
- List of adjacent property owners who have been notified of this hearing
- Affidavit of publication in The Poughkeepsie Journal dated 7/16/10
- Dutchess County Planning: matter of local concern
- Planning Board: positive recommendation

- FAB: no position taken

Mr. Steven and Mrs. Linda Ross, 17 Rossway Road, Pleasant Valley, NY were present and were sworn in.

Mr. Ross submitted photos of the property and reported that the addition will be 14' x 20' – a single room on the west side of the house. He stated that they are creating a main floor bedroom for his mother-in-law. Also, he clarified that they are not adding to the existing number of bedrooms – there are currently 3 bedrooms and they are reconfiguring an existing odd shaped bedroom that they are converting into closet space. He stated that, with the addition, they will continue to have 3 bedrooms. He also stated that their septic and Board of Health approval is for a 4 bedroom house, in any case.

Mr. Vogt asked whether they will be doing anything with a fence – whether they will be taking it down. Mr. Ross stated that they will move the retaining wall 3' to 4' away from the foundation of the house.

Mrs. Ross stated that they will be removing the steps from the shed. She stated that they may use the existing windows in the shed for the addition in the house.

Mr. Ross stated that there will be about 4' between the front corner of the addition to the shed, so there will be room to get through.

Ms. Rubenstein asked how far the shed is from the property line. Mrs. Ross stated that the shed is on the property line. Mr. Ross displayed his survey which shows that the property line hits on the front corner of the shed. He stated that the house was built in 1962 and the shed received a C.O. in 2001 or 2002. Mr. Vogt recalled that the adjacent vacant lot has hills and dales and that's why this Board decided there would not be any impact. He explained that it would take a major undertaking to do anything on that property. He also noted that the other adjacent property has been for sale with a driveway cut in for a number of years.

Ms. Rubenstein asked about the file – documentation on - a previous variance on this property.

Mr. Dunn asked who the prior owners were. Mr. Ross stated that the owner they purchased from had only had the property for 3 years. He stated that the owner who would have been issued the C.O. for the shed was Lawlor. Ms. Rubenstein asked to see the documentation on the shed. Mr. Ross stated that the C.O. date is 8/7/02 and the issue date is 3/11/02.

Ms. Rubenstein asked the applicants for clarification on what they plan to do with the shed. Mrs. Ross stated that the stairs will be removed. She stated that they lead up to a little room above the shed that has electricity but that they will not be using that. She stated that they will be using the bottom of the shed for garden tools, etc. Mr. Ross stated that it may not be the immediate plan, but may be ultimately to take the second level off the shed and keep it as a tool shed. Ms. Rubenstein stated that it's going to be really close. Mr. Ross agreed and stated that it will be about 4'. Ms. Rubenstein stated that that seems close. Mr. Dunn asked if she is concerned about a fire hazard. Ms. Rubenstein responded yes and that her other concern is that someone will connect those two structures and she recalled another property in Town where that happened. Mr. Maucher noted that it would take a lot of work to connect the two and make the shed part of the house. Ms. Rubenstein stated that this Board has seen things like that before. Mr. Vogt spoke about the possibility of someone constructing a

breezeway between the two structures and defending it as having always been there and having a C.O. Ms. Rubenstein agreed and then when that happens the structure is on the property line. Mr. Ross stated that he certainly wouldn't do that.

Mr. Kish asked if the application is for an accessory building or just for an addition to the house. Ms. Rubenstein stated that it is for an addition. Mrs. Ross stated that it is for a bedroom in the house.

Mr. Ross stated that the C.O. for the shed was granted at the same time as the C.O. for the de-attached garage.

Ms. Rubenstein summarized that when the applicants researched the property to purchase the house, they thought the setback requirement was 15' because that is what it was under the old Code. Mr. Ross concurred. Ms. Rubenstein stated that then they bought the house and applied and discovered that the setback now is 30'. Mr. Ross concurred.

Ms. Rubenstein asked if there would be any consideration of either moving the shed or getting a new shed and putting it further from the property line. Mr. Ross stated that they still need a shed; and, given the required setbacks, wherever they put it, the shed would require a variance.

Public Hearing is opened.

No one spoke.

Mr. Vogt asked what the height of the addition will be – will it be in line with the existing roof line. Mrs. Ross stated that it will be the same roof line. Mr. Ross explained how the roof line works.

Public Hearing is closed.

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DISCUSSION

APPEAL #963 – ROSS – AREA VARIANCE

Grid #6463-02-780912

Location: 17 Rossway Road

Ms. Dickerson stated that she researched the computerized index of minutes that documents all ZBA appeals from 1994 to the present, where she can search on the person's name - the names Lawlor and Fagnano do not come up. Also, she submitted the record book that documents all ZBA appeals from 1986 to the present date and noted that there are no entries in either under those names or at that address. Ms. Rubenstein reviewed the record book and found no listing for the names or address, either.

Ms. Rubenstein stated that she thinks she recalls the addition of the garage because she saw it and would have asked the previous zoning administrator about it, but she's not sure whether it needed a variance. Mr. Vogt stated that he thinks the zoning administrator had stated that it met all the required setbacks at the time.

Ms. Rubenstein stated that the shed being on the property line raises a red flag. She stated that she has no problem with the addition or with the variance for the addition; but she

questions whether there is a C.O. for the shed and if it does not pre-date zoning, then this Board would have to address the issue of the shed.

Ms. Dickerson displayed the C.O. for the shed, as found in the grid file for that property. Board discussed how the shed would have received a C.O. and determined that if the C.O. matches what is there, they are legitimately entitled to the shed being there.

Mr. Kish asked how the shed comes into play in an application for an addition. Mr. Vogt stated that it will be within 4' of the addition and the shed is on the property line. Mr. Kish stated that he ignored the shed and that the addition looked ok to him.

Ms. Dickerson provided documents from the grid file:

- An abstract letter from January 2010 that lists the property as a 3-bedroom, 2 bath single family residence predating zoning and that Certificate of Compliance has been issued for a garage, storage shed, hot tub, sunroom addition, and converting the garage into living space and that there are no building or code violations on the property.
- C.O. for a 10' x 10' shed

Mr. Vogt questioned whether the shed is still 10' x 10'. Ms. Rubenstein stated that if they are in compliance with the C.O. for a 10' x 10' shed, then the ZBA does not have anything to complain about. Mr. Vogt stated that he will go back out and look at the shed. He stated that if the shed is bigger than the 10' x 10' then there's a problem. Ms. Rubenstein agreed that that would be a violation. Mr. Vogt stated that there is a second level on the shed with stairs and a deck, which suggests that it is larger than 10' x 10'.

Mr. Rubenstein suggested that a resolution to approve the area variance for the addition could be conditioned on removal of the stairs and the deck and confirmation that the shed is 10' x 10'. Mr. Maucher pointed out that Mrs. Ross stated that they are going to remove the stairs anyway. Ms. Rubenstein agreed. Mr. Dunn also pointed out that Mrs. Ross stated that they were going to remove the second level of the shed and use the windows in the addition. Ms. Rubenstein stated that Mr. Ross backed off of that a little bit. However, Ms. Rubenstein recalled that Mrs. Ross stated that there would be no access to that second level in the shed.

Board discussed conditions of approval. Ms. Rubenstein stated that she believes the shed and the house will someday be all connected, which will create a building that is right on the property line. Board discussed issues of encroaching on the property line and discouraging any connection between the existing house and the shed. Mr. Maucher stated that the concept of connecting the two structures appears to him to be like connecting a house to a tree house. Ms. Rubenstein stated that there have been two previous occasions where residents have made such a connection between structures.

Board continued discussion of conditions for approval. Board agreed that the shed must not be connected to the house because that would create a structure on the property line. Further, they agreed that the resolution to grant be conditioned on the fact that the shed is 10' x 10' and, therefore, is in compliance with the C.O. Mr. Vogt stated that he would measure the shed.

Ms. Dickerson asked what procedure would be required if the shed were found to not be 10' x 10'. Board explained that, for this Area Variance to be valid, the applicant would then have

to bring the shed into compliance with the C.O. and the applicant would not be granted a building permit for the addition until the shed is in compliance.

Mr. Dunn read into the record the **RESOLUTION TO GRANT THE 15' AREA VARIANCE (original on file).**

Ms. Dunn: **MOTION TO GRANT THE 15' AREA VARIANCE WITH THE FOLLOWING CONDITIONS**

- **Payment of all applicable fees**
- **Removal of stairs and landing for shed**
- **Not connecting shed to house**
- **Ensuring shed is 10' x 10' in compliance with C.O.**

SECONDED BY L. RUBENSTEIN

Discussion: Ms. Rubenstein added commentary to the resolution that documents the Planning Board and Fire Advisory Board's recommendations on this appeal. Ms. Dickerson will edit the Area Variance template to provide space to include mention of other Board's recommendations.

Ms. Rubenstein: **MOTION TO APPROVE THE RESOLUTION TO GRANT THE 15' AREA VARIANCE, AS AMENDED, WITH THE FOLLOWING CONDITIONS:**

- **Payment of all applicable fees**
- **Removal of stairs and landing for shed**
- **Not connecting shed to house**
- **Ensuring shed is 10' x 10' in compliance with C.O.**

SECONDED BY S. KISH

VOTE TAKEN AND APPROVED 5-0-0

Meeting unanimously adjourned at 9:40 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the July 22, 2010, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

August 26, 2010

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on August 26, 2010 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
 Steve Kish
 Bob Maucher
 Lisa Rubenstein
 Ron Vogt
 Sharon Wilhelm, Alt.

Members absent: Tim Gerstner
 Helene Czech

Also present: Bruce Donegan, Zoning Administrator

1. **MINUTES**

Ms. Rubenstein: **MOTION TO APPROVE THE 7/22/10 MINUTES AS CORRECTED; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 5-0-0**

2. **USA GAS, INC. – APPEAL #961**

Grid #6363-04-555243

Location: 1415 Route 44

Mr. Avtar Singh, 350 Violet Avenue, Poughkeepsie, NY was present. Mr. Dunn noted that Mr. Singh had been sworn in at the 7/22/10 ZBA meeting.

Mr. Dunn noted for the record that this hearing was re-published in The Poughkeepsie Journal.

Mr. Dunn stated that it is his understanding that Mr. Singh is asking for an adjournment. Mr. Singh responded yes. Mr. Dunn explained that the reason for the adjournment is that he and the ZBA's attorney have requested someone be present at the next ZBA hearing who can speak with authority and who can make decisions on behalf of Citgo with regard to the signage. Ms. Rubenstein asked for clarification on whether Mr. Dunn was meaning an engineer. Mr. Dunn responded no – someone from Citgo who has the authority to say if Mr. Singh does not have the 32 sq. ft. sign, then Mr. Singh may not have a sign because he cannot put up anything smaller.

Ms. Rubenstein stated that, in her opinion, the ZBA does not need this because this Board does not allow corporations to dictate how large the signs will be in the Town. She stated that they cannot force someone to put a sign up that violates Town laws – it is against public policy. She stated that if the corporation tells this Board that it is required, it might be true but it does not mean that the Town would, therefore, change its laws. She gave the example that if MacDonald's claimed that the sign is too small, it does not mean that the Town would change its sign requirements.

Mr. Dunn stated that he understands but stated that it goes directly to whether or not it creates a hardship. He stated that he wants someone with Citgo's authority to testify under oath because that will give the Board a better representation. Ms. Rubenstein asked if he wants someone to testify that they will revoke Mr. Singh's franchise if the ZBA does not grant the variance for the sign. She stated that this is holding the Board hostage, which is not proper.

Mr. Dunn stated that Mr. Nelson has spoken with the client's attorney today, who stated that he does not have that authority. He stated that it would be fair to give the applicant every opportunity to present his case.

Ms. Rubenstein stated that she does not want to waste people's time and that noted that if the applicant were to submit a copy of their franchise contract that dictates the size of the sign, they would not need someone else to testify before the Board. She stated that she's concerned that MacDonald's can write a franchise agreement that requires a 500 sq. ft. sign, which is not what the zone requires, and then they could apply for a variance based on that franchise agreement. She stated that she does not want to waste people's time chasing down information that she does not think is relevant. She stated that she does not think Citgo can enforce a contract where they require the applicant to violate the zoning laws.

Mr. Maucher asked whether the Citgo representative would explain to the applicant and the Board available options. Ms. Rubenstein stated that that is not what Mr. Dunn reported. Mr. Vogt agreed that he cannot see Citgo creating a contract that violates local ordinances. Mr. Dunn stated that he agrees but noted that the ZBA has always been fair to the applicants.

Mr. Dunn asked if Mr. Singh is asking for an adjournment. Mr. Singh responded yes.

Mr. Maucher asked whether the request for someone from Citgo came from the applicant or from this Board. Mr. Dunn stated that it came from him and the Board's attorney – that they requested someone from Citgo to come to the ZBA to address this situation. Mr. Maucher asked if this was the Board's attorney's recommendation. Mr. Dunn responded that they both reached that decision when they spoke yesterday.

Mr. Dunn stated that, in considering hardship, the ZBA should give the applicant every opportunity to present their case and substantiate their appeal. Ms. Rubenstein reiterated that she will not be blackmailed into approving a sign that's bigger than the Code permits. She stated that it is against public policy for any corporation to limit their franchisee based upon violations of the law. She stated that having someone from Citgo testify that the applicant will lose his franchise if he cannot get a bigger sign constitutes a blackmail situation for the ZBA and that she will not be pushed into voting for a variance. She stated that an appeal either makes it under the Board's standards, which is that the ZBA has to balance the equities and balance the harm to the community versus the benefit to the applicant. She stated that that is what the ZBA exists for. She stated that she does not want the applicant to get the idea that they can bring someone before the Board to threaten that they will lose their business.

Mr. Dunn stated that no one will threaten the ZBA and reiterated that he feels the ZBA should give the applicant every opportunity to present his case. He stated that precedent has already been set and that it will not hurt anything.

Mr. Dunn asked if any Board members had any objection to adjourning this appeal. No one voiced any objection.

Mr. Dunn stated, therefore, that the **Public Hearing remains open and is adjourned.**

Mr. Singh asked whether he should take the sample sign down or leave it up. Mr. Vogt reminded Mr. Singh that he was supposed to put up both the 32 sq. ft. sign and a 16 sq. ft. sign, so that the Board members could see the difference, but that he has not done this. Mr. Singh stated that he will put up the 16 sq. ft. sign that includes both the logo and the prices.

Mr. Maucher asked if the temporary sign that is now up is all that will be on it or whether anything else will be added to it. He noted that other gas station signs have verbiage added under the prices advertising things. Mr. Singh stated that only what is displayed on the temporary sign is what they are requesting.

Mr. Maucher asked if they are also planning on another sign at the corner of the property where the two streets intersect. Mr. Singh stated that he only plans for the one sign in the location where the temporary sign now stands.

Mr. Singh asked if it will be possible to raise the sign by one foot. He noted that the bushes on the west side of the sign obscure the sign from drivers who are traveling east on Route 44. Board members concurred that the bushes are in the way and that they are not on the applicant's property, so he cannot remove them. Board members agreed that Mr. Singh can raise the sign by a foot so that the Board can get an idea of what it will look like.

3. DISCUSSION – AREA AND BULK REQUIREMENTS VIS-À-VIS SECTION 98-14

Mr. Dunn pointed out that Section 98-12 – Schedule of Area and Bulk Requirements details the setbacks required in the various zoning districts and that Section 98-14 – Accessory Buildings and Structures dictates the setback (15') for those structures.

Ms. Rubenstein stated that the setback for the accessory structures, therefore, remains the same as it was in the old Code – 15'.

Ms. Dickerson asked for confirmation that this Board's conclusion of its discussion regarding Sections 98-12 and 98-14 is that there is no conflict and no lack of clarity in the Code – that under the new Code the setback for accessory buildings is 15'. Board members concurred.

**4. APPEAL #962 – PALUMBO – AREA VARIANCE
Grid #6564-03-121392
Location: 30 Tinkertown Road**

Ms. Vickie Palumbo, the applicant's daughter, 9 Chestnut Lane, Milton, NY and Mr. Randall Schad, 171 Sullivan Road, Esperance, NY were present and were sworn in.

Mr. Dunn noted for the record that notice of this hearing was re-publicized in The Poughkeepsie Journal and that the file contains a notarized letter from the applicant, Mrs. Joan Palumbo, authorizing her daughter, Ms. Vickie Palumbo, and Mr. Randall Schad to represent her for this appeal.

Mr. Dunn noted that the shed is 7'6" from the property line and that the application is, hereby, corrected: this is an appeal for a 7'6" variance from the 15' setback as required in Section 98-14 – Accessory Buildings and Structures.

Mr. Dunn read into the record the estimates for moving the shed as submitted by the applicant – average cost is between \$3,000 to \$4000 to move the shed.

Mr. Dunn noted that the Public Hearing was adjourned from last month's ZBA meeting and is still open.

No member of the public spoke.

Mr. Dunn asked if Ms. Palumbo or Mr. Schad had anything further to add to their testimony. Both responded no.

Mr. Dunn: **MOTION TO CLOSE THE PUBLIC HEARING; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 6-0-0.**

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DISCUSSION

APPEAL #962 – PALUMBO – AREA VARIANCE

Grid #6564-03-121392

Location: 30 Tinkertown Road

Mr. Dunn asked for discussion on this appeal.

Ms. Rubenstein stated that if this appeal had come to the Board without any opposition, the Board would have treated the appeal as a standard variance for a shed that had been built too close to the property line. She noted that there is now a penalty in the fee structure for building something without a permit – “as built.” She stated that the neighbor testified in opposition to this appeal, but that the sense she gleaned from the neighbor was that his opposition was not related to having the shed too close to the property line but, rather, had to do with a lot of other things that were happening in the neighborhood. She stated that, as a zoning matter, a 7'6" variance is not that much compared to some that the Board has considered. Further, she noted that there's plenty of room behind the shed for the applicants to do whatever they need to do without encroaching onto the neighbor's property. She stated that it seems that the benefit to the applicant outweighs the detriment to the community.

Mr. Maucher and Ms. Wilhelm stated that they agreed. Mr. Kish stated that he thinks it looks good and that it fits in nicely. He stated that if they move it to the right on top of the driveway then you impose an impracticality for access to the house. He stated that he does not think a variance of 7' 6" is a problem.

Mr. Maucher stated that the neighbor always had the option, if he was really upset about it, to pursue this before he got a letter in the mail notifying him of this Appeal. Ms. Rubenstein agreed and stated that she does not think his opposition is about the variance.

Mr. Vogt asked if this Board will take into consideration the need to have the electrical inspected. Mr. Dunn stated that it is not this Board's purview. Ms. Rubenstein noted that one of the conditions for approval of the variance is that they must meet all other applicable permits. Mr. Donegan explained that, if the variance is granted, the applicant must apply for a building permit and meet all codes in order to be granted the Certificate of Compliance.

Mr. Dunn read into the record and proposed a motion: **RESOLUTION TO GRANT THE 7' 6" AREA VARIANCE FOR THE EXISTING SHED ON THE PROPERTY (original on file) WITH THE FOLLOWING CONDITIONS:**

- **Payment of all applicable fees**
- **Compliance with all applicable requirements to get a Certificate of Compliance**

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 6-0-0.

Meeting unanimously adjourned at 8:20 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the August 26, 2010, 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

**TOWN OF PLEASANT VALLEY
ZONING BOARD OF APPEALS MINUTES
SEPTEMBER 23, 2010**

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on September 23, 2010 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: Chairman John Dunn; Boardmembers Steve Kish, Tim Gertstner, Lisa Rubenstein, Ron Vogt; Boardmembers Bob Maucher and Helene Czech were absent as was alternate Sharon Wilhelm; Secretary Laurie Fricchione and Zoning Administrator Bruce Donegan were also present

USA GAS, INC. – APPEAL #961

Grid #6363-04-555243

Location: 1415 Route 44

This item was on the agenda for a continuation of a public hearing for an Area Variance for a sign. The property is in the HDR zoning district. The Zoning code permits a 16 sq. ft. monument sign. The applicant's proposed sign is 32 sq. ft. Code permits 60% coverage – sign exceeds that by 4.9%. Due to the applicant's absence at the meeting, the public hearing was adjourned to the October meeting so they could provide answers to the ZBA's questions and concerns. Boardmember Rubenstein stated that there were several ways to handle the fact the applicant was not present. One way was to make a call to the applicant to inquire if they were interested in continuing the process. Boardmember Rubenstein seemed to remember asking the applicant to provide a rendering of the proposed sign, but the applicant stated he was not willing to do it because it would have cost him \$400 more. Chairman Dunn made a motion to adjourn the public portion of the appeal until the October meeting which was seconded by Boardmember Vogt and passed 5-0 in favor.

APPEAL #964 – PIERCE – SPECIAL USE PERMIT

Grid #6565-02-646639

Location: 11-13 Clinton Corners Road

Joe Melito of Crisp Architects appeared before the Board and was sworn in by Chairman Dunn. This project is an application for a Special Use Permit for an addition to a pre-existing non-conforming structure. §98-57B allows for the expansion of a pre-existing non-conforming structure subject to a Special Use Permit. Mr. Melito stated that the existing porch on the house is within the new front yard setback according to the new code; thus the special use permit so they can build an addition to the back of the house. Chairman Dunn stated he recalled an addition was built approximately 4 or 5 years ago. Mr. Melito's understanding of that addition was that it was in compliance with the old code at the time. This proposed addition is now in the setback according to the new code. There is an administrative decision in the file written by the Zoning Enforcement Officer that states the applicant seeks a special use permit to allow for a 15' x 15.5' addition to a pre-existing, non-conforming dwelling. The front yard setback is now 70' and the existing dwelling has a front yard setback of 64.5' which makes it non-conforming. A special use permit is required per Article 5 §98.57B (expansion of a non-conforming structure). The FAB issued their findings stating that they take no position because it is a

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matter for the ZBA. The Planning Board at its 9/14/10 meeting positively recommended to the ZBA that the special use permit be granted. Chairman Dunn asked Mr. Melito what the addition was to be used for. Mr. Melito stated that the house is an existing 2-family structure. The addition is proposed to be off the apartment portion of the house to reorganize the rooms. The proposed addition is technically going to be a bedroom to replace another room that is being used as a bedroom but is not legally one. Boardmember Rubenstein asked what makes this a non-conforming structure; the setback from the front? The answer is no. It's because it is an expansion of a pre-existing non-conforming structure, which requires a special use permit. The expansion encroaches in the setback. The addition is proposed to be on a structure which in itself is pre-existing, non-conforming. The square footage of the proposed expansion is 240. Boardmember Rubenstein wanted to know if the square footage of the existing addition plus the square footage of the proposed addition exceeds 50% of the square footage of the original structure. Mr. Melito did not know what the square footage of the original structure was, nor what the square footage of the existing addition was. Mr. Melito stated that the existing expansion, when built in 2004 or 2005, was in compliance with the codes at the time. The expansion is now in this new code non-conforming, but was not back then. Boardmember Rubenstein stated if all the ZBA was doing is granting a variance because it was too close to the property line, the applicant would not be there for a special use permit, it would be for a variance. She wanted to know if the prior project was an expansion of a non-conforming use or was it a variance. Mr. Melito was instructed to calculate the square footage of the original structure; add the square footage of the existing addition to the square footage of the proposed addition and make sure the number is not more than 50% of the first number. The motion to adjourn the public hearing to the October meeting so that he has an opportunity to put information in the record was introduced by Boardmember Rubenstein, seconded by Boardmember Vogt and passed 5-0 in favor.

APPEAL #965 – MORIN – AREA VARIANCE
Grid #6464-04-917084
Location: 2048 Route 44

Dr. Louise Ann Morin, 18 Monell Avenue, Poughkeepsie, NY 12603 was sworn in by Chairman Dunn. Dr. Morin wished to adjourn the public hearing for both the area variance and special use permit as she is in negotiation with the owner of the Route 44 property and does not want to incur further costs until she obtains all the information she needs. This project involves an application for an Area Variance for a Veterinary Clinic in a Rural Residential Zone. Under §98-52 B(1), a Veterinary Clinic in RR zone requires 10 acres. This parcel is 0.5 acres. Application is for 9.5 acre area variance. This project will be placed on the October agenda.

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APPEAL #966 – MORIN – SPECIAL USE PERMIT

Grid #6464-04-917084

Location: 2048 Route 44

See above. This is an application for a Special Use Permit for a Veterinary Clinic in a Rural Residential Zone. Under §98-12 – Schedule of Permitted Uses, Veterinary Clinics are permitted subject to Special Use Permit, and if granted, then must go to the Planning Board for a Site Plan application.

MINUTES

The motion to approve the 8/26/10 minutes as written was introduced by Boardmember Rubenstein, seconded by Boardmember Vogt and passed 5-0 in favor.

The motion to close the meeting was introduced by Chairman Dunn, seconded by Boardmember Gerstner and passed 5-0 in favor. Meeting adjourned at 8:00 p.m.

Respectfully submitted,

Laurie Fricchione
Secretary

The foregoing represents unofficial minutes of the September 23, 2010, 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

**TOWN OF PLEASANT VALLEY
ZONING BOARD OF APPEALS MINUTES
OCTOBER 28, 2010**

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on October 28, 2010 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: Chairman John Dunn; Boardmembers Robert Maucher, Sharon Wilhelm, Steve Kish, Ronald Vogt; Tim Gerstner; Zoning Administrator Bruce Donegan; Secretary Laurie Fricchione. Boardmembers Helene Czech and Lisa Rubenstein were absent and excused.

APPEAL # 961 – USA GAS, INC.

Grid # 6363-04-555243

Location: 1415 Route 44

This item was on the agenda for a continuation of a hearing for a Sign Area Variance. Property is in HDR zoning district. Code permits 16 square feet monument sign. Applicant's proposed sign is 32 square feet. Code permits 60% coverage – sign exceeds that by 4.9%. Ray VanVorhees, the applicant's architect, as well as Avtar Singh, the owner and applicant, appeared before the Board. Mr. VanVorhees stated that they went back to the drawing board in terms of reducing the variance request. Basically, the "CITGO" sign itself is 4' x 4' and what was proposed next to it the last time was a 4'x4' sign indicating the pricing which brought it to 32 square feet instead of the 16 square feet required. Mr. VanVorhees stated that the CITGO sign itself would be industry standard size, but the pricing portion of the sign would be 28 square feet which is the smallest it could be and still be visible to passersby looking for gas prices. There was a discussion regarding branding, the size and number of signs and other gas stations' signs. Mr. Singh was concerned that if the sign were too small, it would not be visible to potential patrons. Chairman Dunn questioned why canopy signs could not be used and Mr. Van Vorhees said the Planning Board rejected it. Chairman Dunn made an announcement that he wanted to take a recess in order to make a phone call and the tape was stopped. Chairman Dunn returned and stated that after speaking with Planning Board Chairman Labriola, as far as Chairman Labriola was concerned, the canopy would be considered a part of the building. Wall signs are allowed to be one square foot for every three lineal feet of façade to a maximum of 24 square feet. In this particular instance, it would be 15 square feet being there is 45 feet of façade. The original monument sign was proposed to be 32 square feet; now it is being proposed to be 28 square feet. Boardmember Vogt suggested the following to strike a reasonable accommodation so the applicant would have the same advantages as other businesses in his area: construct a monument sign which would be the primary sign and instead of having one double sided sign with CITGO on it and the prices, "split it" so that one sign could be placed on either side of the canopy (which would be considered wall signs) so that passersby could decide from either eastbound or westbound traffic if they would be inclined to pull in to fuel their vehicles. In the end, the monument sign would not require a variance, but splitting the double sided sign to have it be two, single sided signs (on either side of the canopy) would require a 1'4" variance for each of the two side canopy signs. The signs themselves will not be internally illuminated; rather, they will be down-lit and the signs will be turned off after the station has closed. The hours of operation will be 6:00 a.m. to 10:00 p.m. A review of the zoning code shows that there are two sections that deal most closely with this appeal. The first is §98-46 I 1 (d) for relief of certain aspects of the

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zoning code and the second is §98-46 I 1 (a) (5) which deals with the definition of primary/wall signs. Chairman Dunn made a motion to close the public portion of the meeting which was seconded by Boardmember Kish and passed 6-0 in favor. Two sections of Chapter 98 were cited in support of this application being granted a variance: §98-46 I 1 (d), (relief) and §98-46 I 1 (a) (5) (primary/wall signs). Chairman Dunn stated the following: With Area Variance No. 961 (USA Gas)

WHEREAS, USA Gas, Inc., Avtar Singh has applied for an area variance for a primary wall sign 16 square feet on both the east and west side of his canopy and §98-46 permits 15 square feet, requested area variance is 2 square feet since the sign is on both sides of the canopy, we need a 1 square foot per side variance which is located at 1415 Route 44 which is located in the HDR Zoning District; WHEREAS the public hearing was held on this area variance on 7/22/10, 8/26/10, 9/23/10 and 10/28/10; WHEREAS the Pleasant Valley Planning Board reviewed the appeal on 7/13/10 and provided the following recommendation: NEGATIVE RECOMMENDATION because there is no compelling reason to grant a sign variance for twice the allowed size of signage in this residential district and WHEREAS the Pleasant Valley Advisory Board reviewed this appeal on 6/2/10 and provided the following recommendations: NO POSITION as it does not currently involve any fire or safety issues and is uniquely a matter for the ZBA and WHEREAS the Dutchess County Department of Planning and Development reviewed this appeal on 6/25/10 and provided the following comments that it is a matter of local concern with comments, the original being on file; NOW THEREFORE be it resolved that the Zoning Board of Appeals of the Town of Pleasant Valley hereby finds that if granted the area variance would not create an undesirable change in the character of the neighborhood or a detriment to nearby properties for the following reasons: the monument sign complies with all zoning (16 square feet externally lit); The benefit to the applicant cannot be achieved by some other method feasible for the applicant to pursue other than an area variance for the following reason: the business could not be identifiable to motorists and we will allow sign on canopy, considering it an extension of the building. The requested area is not substantial for the following reason: because §98-46 I 1 (a) (5) allows for a 15 square foot wall sign and §98-46 I 1 (d) provides relief for visibility. The business would not be identifiable to motorists and we will allow the sign on the canopy considering it to be an extension of the building. The canopy signs are considered to be primary signs. If granted, the area variance will not have an adverse affect or impact on the physical or environmental conditions in the neighborhood for the following reasons: externally lit and the canopy is an existing structure; signs will not be lit after business hours; The alleged difficulty was not self-created as the canopy is for area lighting and fire suppression; BE IT FURTHER RESOLVED that for the foregoing reasons, the applications for the area variance described above is hereby granted as the benefit to the applicant, if the area variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community as follows: minor variance; BE IT FURTHER RESOLVED that if granted, the requested area variance is conditioned on the following: payment of all applicable fees and compliance with the foregoing zoning laws and the signs will be externally lit and no bigger than 4' x 4'; BE IT FURTHER RESOLVED that the applicant is hereby advised that pursuant to §98-95B3B of the Town of Pleasant Valley Town Code and the procedures therein, any variance that granted which is not exercised within one year of the date of issuance or which remains

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unexercised for a continuous period of one year will be declared revoked and thus will be void without further hearing from the ZBA. I now make that in the form of a resolution and will the secretary please call for a vote:

Boardmember Gerstner – yes
Boardmember Maucher – yes
Boardmember Vogt - yes
Boardmember Kish - yes
Boardmember Wilhelm - yes
Chairman Dunn – yes

Vote passed 6-0 in favor, 2 absent

APPEAL # 964 — PIERCE – SPECIAL USE PERMIT

Grid # 6565-02-646639

Location: 11-13 Clinton Corners Road

Continuation of an application for a Special Use Permit for an addition to a pre-existing non-conforming structure, which §98-57B allows for this expansion subject to a Special Use Permit. The applicant submitted a letter to the ZBA indicating their intention to withdraw the above-mentioned appeal.

APPEAL # 965 — MORIN – AREA VARIANCE

Grid # 6464-04-917084

Location: 2048 Route 44

Continuation of an application for an Area Variance for a Veterinary Clinic in a Rural Residential Zone. Under §98-52B (1), a Veterinary Clinic in RR zone requires 10 acres. This parcel is 0.5 acres. Application is for a 9.5 acre area variance. Dr. Morin, who was reminded that she was still sworn in, informed the Board that she was withdrawing this appeal.

APPEAL # 966 — MORIN – SPECIAL USE PERMIT

Grid # 6464-04-917084

Location: 2048 Route 44

Continuation of an application for a Special Use Permit for a Veterinary Clinic in a Rural Residential Zone. Under §98-12, Schedule of Permitted Uses, Veterinary Clinics are permitted subject to a Special Use Permit, and if granted, then must go to the Planning Board for a Site Plan Application. Dr. Morin, who was reminded that she was still sworn in, informed the Board that she was withdrawing this appeal.

APPEAL # 967 — MORIN – SPECIAL USE PERMIT

Grid # 6564-02-733977

Location: 2510 Route 44

Application for a Special Use Permit for a Veterinary Clinic in an HWH Zone. Under §98-12, Schedule of Permitted Uses, Veterinary Clinics are permitted subject to a Special Use Permit. Dr. Louise Ann Morin, 18 Monell Avenue, Poughkeepsie was sworn in by Chairman Dunn. Dr. Morin stated to the Board that all the information she provided to the Board as far as her intentions to practice veterinary medicine in the 2048 Route 44 location have remained unchanged except for the physical location, which is now in a

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shopping plaza that underwent extensive review and approval by the Town of Pleasant Valley and all other interested and involved agencies. Town Planning Board passed this on to ZBA with a very positive recommendation stating that the applicant did not have to return to them for site plan approval. No dogs will be kenneled outdoors, there will not be boarding or grooming. Medical waste will be disposed of with the same protocol as for Quest Diagnostics which is a next-door tenant of Dr. Morin's proposed practice site. There was no one in the audience wishing to speak either for or against this appeal, so a motion to close the public portion of this meeting was introduced by Chairman Dunn, seconded by Boardmember Kish and passed 6-0 in favor. Dr. Morin was informed that there would most likely be a decision rendered at the end of the public portion of the appeals this evening.

RESOLUTION TO GRANT SPECIAL USE PERMIT:

Formal Resolution granting requested special use permit introduced by Chairman Dunn, seconded by Boardmember Gerstner and passed 6-0 in favor, 1 absent. Resolution in Appeal File and submitted to Town Clerk for filing.

MINUTES

The motion to approve the 9/23/10 minutes as written was introduced by Chairman Dunn, seconded by Boardmember Maucher and passed 6-0 in favor.

The motion to close the meeting was introduced by Chairman Dunn, seconded by Boardmember Vogt and passed 6-0 in favor, 1 absent. Meeting adjourned at 9:42 p.m.

Respectfully submitted,

Laurie Fricchione
Secretary

The foregoing represents unofficial minutes of the October 28, 2010, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS
November 18, 2010

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on November 18, 2010 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.

Present: Chairman John Dunn; Boardmembers Steve Kish, Tim Gerstner, Lisa Rubenstein, Ron Vogt, Sharon Wilhelm; Secretary Laurie Fricchione. Boardmembers Rob Maucher and Helene Czech were absent and excused.

1. JOHN & LEISA OLES- APPEAL #968
Grid #6363-01-414892
Location: 96 Elm Lane

This item was on the agenda for a variance in the amount of 7'6" for an existing hot-tub in the side yard of the above residence where 15' is required. Mr. John Oles, residing at 96 Elm Lane, Pleasant Valley, NY appeared before the Board on his own behalf and was sworn in by Chairman Dunn. He stated that an existing pool on his property at the time of purchase was subsequently replaced with a hot-tub smaller than the pool. He did not realize that a permit was not taken out for the pool until after the hot-tub was installed. There being no comments from anyone in the audience, Chairman Dunn read the resolution granting the requested variance which is part of the ZBA Appeal file. The motion granting the 7'6" side yard variance was introduced by Chairman Dunn, seconded by Boardmember Gerstner and passed 6-0 in favor, 2 absent.

The motion to accept the minutes of the October 28, 2010 meeting was introduced by Chairman Dunn, seconded by Boardmember Vogt and passed 5-0 in favor, 1 abstention, 2 absent.

The motion to close the meeting was introduced by Chairman Dunn, seconded by Boardmember Kish and passed 6-0 in favor, 2 absent.

Respectfully submitted,

Laurie Fricchione
Secretary

The foregoing represents unofficial minutes of the November 18, 2010, 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