

ZONING BOARD OF APPEALS – MINUTES OF MEETING

Wednesday, August 17, 2016, 7:00 p.m.

A tape of the proceedings is available at the ZBA office

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals was held on August 17, 2016 at 7:00 p.m. at the Pleasant Valley Town Hall, 1554 Main Street, Pleasant Valley, NY.

Chairman:	John J. Dunn
Board Members present:	Tim Gerstner Stephen Kish Robert Maucher Kathy Myers Sharon Wilhelm
Board Member absent:	Michael Schroeder
Consultant:	Jim Nelson, ZBA Attorney
Staff:	Michael White, Zoning Administrator Sonia James, Secretary

Chairman Dunn called the meeting to order at 7:07 p.m. and explained the procedure: all testimony will be taken under oath or affirmation; once applicants have presented their cases, the Board will hear comments from the public, after which the public portion of the hearing will be closed and any additional appeals will be heard; after all appeals have been heard, the Board will discuss and vote on each one.

A motion made by Mrs. Wilhelm to approve the July 27, 2016 minutes was seconded by Mr. Gerstner and approved 6-0.

A correction was made to the first paragraph of the June 15, 2016 minutes: it should read "June 15, 2016" instead of "April 27, 2016."

Continuation of Public Hearing: Area Variance – Appeal # 1007

Applicant: Eli Dow

Grid #: 6463-02-766841 Zoned: RR

Location: 26, Rossway Road, Pleasant Valley, NY

Chairman Dunn declared the public hearing open and stated that on July 27, 2016, the ZBA granted a road frontage variance of 18' 22" to Mr. Dow, but that the matter of the sight distance variance has not been resolved. He further stated that it is not the intention of the ZBA to deprive Mr. Dow of the use of his land, so it was suggested that the engineers and lawyers for

both Mr. Dow and the Town should meet to discuss the issue and arrive at a solution that is amenable to both sides.

Mr. Aaron DePaolo, attorney representing Mr. Dow, explained that it was his understanding that the engineers did have discussions regarding a potential electronic sign to be placed at the entrance to the driveway. He added that he and his client reserve the position that the driveway is pre-existing and therefore, according to the Town Code, a new sign is not necessary; however, if it is determined that a sight variance is needed, Mr. Dow will apply for said variance, but will reserve the position that the variance is not required because it is a pre-existing driveway.

Chairman Dunn then reiterated that although the Board wants the matter to be resolved in a manner that is acceptable to everyone involved, there is a concern for safety, since Mr. Dow's driveway has a 249' sight distance in an area where the Town Code requires 300' – 400'. Mr. DePaolo countered that the driveway has existed since the 1950's, it is up to the ZBA to determine if it is pre-existing, and there are six or seven driveways on Rossway Road that are similar to Mr. Dow's. He added that the Town code does *not* state that if the use of the property changes from commercial to residential, it will change the pre-existing status of the driveway, and that his client wants the driveway to be safe, but a flashing sign will be very costly.

Mr. DePaolo submitted a letter (attached) from Ms. Dolores Benedict, a long-time resident of Rossway Road and a former Pleasant Valley Zoning Administrator, which states that the driveway dates back to the 1950's. Therefore, he requested that the ZBA Board vote on the issue of whether or not the driveway is pre-existing.

Mr. Eli Dow was sworn in and informed the Board that when he bought the property the driveway was there, and that someone had covered it with stone or crushed gravel. He pointed out that the Town's engineer has admitted to not being a traffic engineer, and that he (Mr. Dow) has employed "top notch" engineers who determined that it is, indeed, a pre-existing driveway and that there is no evidence of a sign at the entrance to the driveway. He further explained that, although he is not obliged to do anything, he is willing to do whichever of the following best suits the Town: paint a line down the middle of Rossway Road from Rt. 44 to the Taconic; put up a "Hidden Driveway" sign; or erect a hump in the road between his driveway and Rt. 44.

Mr. Dow also made the following points:

- there are six other non-conforming driveways on Rossway Road
- he goes in and out of his driveway each day and considers it to be safe
- he asked the PV Fire Company if there have been accidents on Rossway near his driveway, and was told that none were on record

- the flagmen referred to during last month's meeting were in place because animals were being transported, not because of vehicular traffic
- he has received estimates of \$5,000 - \$10,000 for a flashing sign, which is a great deal of money, so perhaps a "Hidden Driveway" sign is a possibility
- he and his attorney have produced aerial photographs and a letter from Ms. Benedict that prove that his driveway has existed since the 1950's

Chairman Dunn explained that he was informed by the current Highway Superintendent that Gordon Daley, the previous that Highway Superintendent, told him to make sure to have cones and flags at the end of Mr. Dow's driveway during construction. He reiterated that although the ZBA wants to see that Mr. Dow gets to use his property, there is concern for the safety of drivers using Rossway and for Mr. Dow's safety as well. Mr. Dunn added that he has driven in and out of Mr. Dow's driveway several times, and there is a limited sight distance when turning left toward Rt.44.

Mr. Dow stated that:

- although the sight distance is less than the Code requires, he has measured the distance from the end of the driveway to the 4.5' tall 30 mph sign at the top of the hill, and that distance is 310'
- even before he applied for a driveway permit, he was told by Highway Superintendent Gardner that he would not issue the permit

Mr. DePaolo referred to the Town Code section 46-1, subsection c., which states that a driveway permit for a pre-existing, non-conforming driveway is not required.

Mr. Michael Pomarico of 1239 Route 300, Newburgh, NY, was sworn in and gave his opinion that too much was being asked of Mr. Dow, and that some of the responsibility for safety should be placed on the people who operate vehicles on Rossway Road.

Mr. Kish asked if the property has been in continuous use and was told by Mr. Dow that it was, and that he didn't think anyone would disagree that the driveway has been in continuous use, once again referencing the letter from Ms. Dolores Benedict. He said that he would be more than happy to install a "Hidden Driveway" sign at his own expense. He added that since he drives back home on the Taconic on a daily basis, he feels that turning off the Taconic onto Rossway Road is probably more dangerous than turning out of his driveway onto Rossway.

Mr. DePaolo confirmed that when construction is being done, Mr. Dow will have a flag person present while construction vehicles are going in and out of the premises. He further added, for the record, that his client reserves the right to apply for a sight distance variance.

Zoning Administrator White read portions of his memo of August 17, 2016 regarding driveway definitions.

Chairman Dunn asked for comments from the Board:

-Ms. Myers wanted to know when the sight distance ordinance was adopted. Mr. White answered that it has been in existence for decades, but while it appears in the Code adopted in 2009, he is unsure if it was in the original Code that was adopted in 1974.

Mr. Nelson stated that Chapter 46 was adopted in 2001 and dealt with issues such as the definition of a driveway, permits for driveway relocation and for work along a highway, and the ability of the ZBA to decide if a driveway is pre-existing, legal, and non-conforming.

Mr. Nelson also stated that he thought that the best solution is to reach a resolution that would be acceptable to Mr. Dow and to the Highway Superintendent. The Board can decide, at the applicant's request, whether or not Mr. Dow's driveway is a prior, legal, and non-conforming driveway, and has 62 days after the closure of the Public Hearing to render their decision.

-Mr. Kish wanted to know if Mr. Dow was paying taxes at a commercial or a non-commercial rate, and Mr. Dow replied that he has not yet received a tax bill.

Mr. Dow informed the Board that a \$15,000 flashing sign is too expensive, and that although he has already spent a great deal of money on lawyers and engineers, he would be happy to put up a "Hidden Driveway" sign because he is a reasonable person, and it would be his gift to the town. Chairman Dunn said that he thought a flashing sign would attract more attention than a "Hidden Driveway" sign.

Chairman Dunn asked the Board to think about voting on whether or not Mr. Dow's driveway is pre-existing, and the Board voted unanimously to do so.

Chairman Dunn's motion to close the public portion of the meeting was seconded by Mr. Kish and approved 6-0.

Chairman Dunn's motion that the driveway at 26 Rossway Road be determined to be pre-existing, and therefore not in need of variances, was seconded by Mrs. Wilhelm and approved 6-0.

Mr. Dunn instructed Mr. White to follow up with Mr. Dow and the Highway Superintendent regarding the placement of a sign. Discussion then ensued regarding the fact that there are laws regarding placement, size, etc.

Mr. DePaolo concluded that since the driveway has been determined to be pre-existing, there should be no reason for a delay in issuing the building permit so that Mr. Dow can begin to build his house; Mr. Dunn reiterated that a driveway permit is not required.

Area Variance – Appeal # 1009

David Pretak -Wood Crest Pines

Location: 32 Locust, 1383 Rt. 44, Pleasant Valley NY 12569

Application for Area Variances for: the installation of a 14' x 70' mobile home (front setback variance of 12'; left setback variance of 7' 7"; rear setback variance of 8'), a future deck (right setback variance of 4'), and a proposed 8' x 10' storage shed (right setback variance of 12'; rear setback variance of 17").

Chairman Dunn provided proof of the following:

1. the Affidavit of Publication in the Poughkeepsie Journal
2. a list of neighbors to whom certified letters were sent

Mr. David Pretak was sworn in and informed the Board of the following:
-the previous 12' x 66' home was built in 1960's and has been removed
-the new home will be placed in almost the exact place as the old home
-the home to the left was granted a variance in the past; there is an empty slab to the right of the proposed home
-the speed limit is 20 mph

Mr. Pretak stated that the variances for the deck and the shed are for future improvements to the home and the lot; the 3' wide stairs would be 15' from the front lot line, and the deck would be built off the entry stairs. Chairman Dunn informed him that variances must be exercised within a year of the date of granting.

Ms. Myers asked if the cement pad is original, and Mr. Pretak informed her that the original pad was gravel, but new requirements dictate the installation of an engineered pad with concrete runners so that someone can get underneath the pad if necessary.

Ms. Myers asked if there is a central sewer system and if the homes in the Park are rentals or occupied by owners. Mr. Pretak indicated that there are group septs and that almost all of the homes are occupant-owned.

Chairman Dunn read the attached resolution; his motion to approve the requested variances was seconded Mr. Kish and approved 6-0.

Area Variance – Appeal # 1010

David Pretak - Wood Crest Pines

Location: 27 Shagbark, 1383 Rt. 44, Pleasant Valley NY 12569

Application for Area Variances for: the installation of a 14' x 70' mobile home (front setback variance of 13'; right setback variance of 3' 10") a future deck (left setback variance of 4'), and a proposed 8' x 10' storage shed (left setback variance of 12').

Chairman Dunn provided proof of the following:

1. the Affidavit of Publication in the Poughkeepsie Journal
2. a list of neighbors to whom certified letters were sent

Mr. Pretak informed the Board of the following:

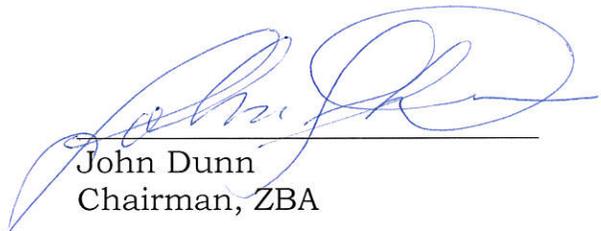
- the proposed home will be placed on a previously utilized lot
- the situation regarding this home is almost the same as that of the Appeal #1009
- the proposed deck will be to the right of the home
- the future shed will be to the right rear of the home
- the home will be moved a little more towards the left than Appeal #1009

The public portion of the hearing was closed at 8:24.

Chairman Dunn read the attached resolution; his motion to approve the requested variances was seconded Mr. Gerstner and approved 6-0.

Mrs. Wilhelm's motion to adjourn the meeting at 8:28 p.m. was seconded by Mr. Gerstner and approved 6-0.

Approved by:



John Dunn
Chairman, ZBA

Dated:

