

Town of New Paltz
Zoning Board of Appeals
Meeting Minutes
April 9, 2019

Chair Loza welcomed everyone to the April 9th Zoning Board of Appeals meeting held at the Town of New Paltz Community Center at 7:00pm.

Attendees: Joe Douso, Kelly O'Donnell, Leonard Loza, Steve Esposito, Caroline Paulson

Also present: ZBA Attorney Richard Olson, Building Inspector Stacy Delarede, Code Enforcement Officer Krissy Granieri, and Building Department Attorney George Lithco

Absent: Joe Moriello

Review and Approval of Minutes

The minutes from the March 12, 2019 are presented by Chair Loza, who noted he had one change on the last line changing the second 38 to 2. Chair Loza then asked for a motion to approve the minutes.

Motion 1 by Caroline Paulson to approve the minutes as amended.

Motion 2 by Kelly O'Donnell. All present in favor. Minutes approved.

Public Comments

Michele DiDonna of 20 Brouck Ferris Blvd., read from her memo that she addressed to the ZBA in regards to her opposing the Ferris Woods Application.

Louis Turney of Old Rt. 299, voiced his concerns whether his well will be affected by the Ferris Woods Application if approved.

Christine Ransom of 19 Brouck Ferris Blvd, spoke about her concerns for the Ferris Woods Application and her opposition to it.

Chair Loza asked for a motion to close the public comments.

Motion 1 by Caroline Paulson.

Motion 2 by Steve Esposito. All present in favor. Motion approved.

ZBA 19-50 Stout, 5 Shivertown Road, Area Variance

Alan Stout came before the Board to discuss his area variance request. Mr. Stout explained that he has a site plan before the Planning Board to put an addition (18 x 28 ft., 504 sq. ft.) on his home. Mr. Stout stated he was there as his property is in the R1 district and a portion of his property is also in the B2, a split district. Mr. Stout mentioned he was trying to address the substantial and stated to the Board that he has a family situation, with a split level home, where the addition would allow loved ones to stay in their home on the lower level, rather than have to go to a nursing home, and they can care for them. Mr. Stout feels it is substantial for that reason, but having unsubstantial effect on the neighborhood. Mr. Stout stated his neighbor, Ed Kara, the blacksmith along Rt.32, has no objections to his addition and would sign documentation to support that. Chair Loza stated that if he gets any letters of support from the neighbors that would be helpful. Mr. Stout agreed to do that.

Chair Loza asked for any comments from the Board. Joe Douso asked if this was just a one level addition. Mr. Stout verified it was. Every neighboring property except Clarkson Appliance has residential use. All properties on Old Kingston Road are R1. Mr. Stout feels he shouldn't have any part of the B2 but it is what it is.

Chair Loza asked for a motion to set the public hearing.

Motion 1 by Kelly O'Donnell for setting the public hearing for May 14th. Motion 2 by Caroline Paulson. All present in favor. Motion carried.

Mr. Stout was advised to see Pat for the public hearing packet.

Motion 1 to send to Ulster County Planning Board by Kelly O'Donnell. Motion 2 by Len Loza. All present in favor. Motion carried.

ZBA 17-02 Ferris Woods – Appeal of Building Inspector's Interpretation

Charles Martabano, Attorney for Ferris Woods, and Peter Setaro from CPL came before the Board. Attorney Martabano stated that Peter is setting up to show the changes to the application before the Board since 2017. Attorney Martabano stated the best way to start would be to show the changes for the project. Mr. Setaro stated this project is before both the Planning Board and the ZBA previously. They have reduced the project by 20% by removing one building (the 5th building) which leaves the remaining 4 buildings. Mr. Setaro stated they have also taken all the extra items from before out of the A 1.5 zone and are all now in the B2 zone, but a small portion of access goes out onto Brouck Ferris. Mr. Setaro added there is emergency access through the carwash, and the applicant has an agreement with the carwash owner for the emergency access. Mr. Setaro stated there is a small portion of town regulated buffer area that will be affected by the emergency access, also adding, another item in the 100 foot buffer are the two water supply wells. Mr. Setaro indicated to the Board where the wetlands were located on the map. Mr. Setaro continued to review the project, noting that the items removed from A 1.5 zone included parking, and the pavilion, but added that a very small piece, approximately 2200 sq. feet, is still within the A 1.5 zone.

Attorney Martabano stated that the access is not feasible anywhere else so the 2200 sq. feet (40x45) is the portion that is the issue and why they are there, as it's very small as compared to the 30+ acres involved in the B2 zoning district. Attorney Martabano stated that the interpretation of the Building Inspector is such that this B2, 30+ acres in essence loses its zoning, as they feel it being unique, cannot get access out to a public road as the rest of the areas are constrained by wetlands. Attorney Martabano continued commenting that their application is twofold in nature as they have first moved everything out of the A 1.5 and they are challenging her interpretation that the property can't be used for access to B2, arguments have been given to the Board, and also have as an alternative a variance request if the Board disagrees with them. Attorney Martabano added the SEQRA EAF has been submitted to the planning board and as of last night's meeting, as they're still looking at it and they also have the (PB) Engineer Consultant's response they are working on.

Stacy Delarede stating since he's challenging her determination, he has to bring forth his case.

Building Department Attorney George Lithco stated he had an opportunity to review the letter from the Counsel for the applicant, and believes that none of them apply to the Building Inspector's determination for use permitted in the district as the code very clearly states for primary use as to what permitted use is allowed within the district. Attorney Lithco stated he would be happy to address all of that in a memo.

ZBA Attorney Richard Olson stated the only thing the Board can do at this point then that the lead agency, which he believes is the Planning Board, makes an environmental determination.

Attorney Martabano stated that they have not yet reached a SEQRA determination (with the PB), urged them to come to a conclusion, spending last night addressing issues, and traffic studies were done for non senior units, received the Town's Traffic Coordinator's report, but has not yet obtained a SEQRA determination and not sure when that will be done. ZBA Attorney Richard Olson stated they could hold the public hearing but until a SEQRA determination is made no decision can be made. Attorney Martabano stated they'd like to go forward to schedule the public hearing. Chair Loza stated that they do not have to close the public hearing as it can be left open.

Joe Douso commented that basically from us (the Board) is access to the project. Attorney Martabano stated to utilize the 2200 sq. feet parcel for access to the project is correct, whether it is by interpretation or by variance. Joe Douso stated then it has nothing to do with the project. Attorney Martabano stated no, before the Planning Board and doing the SEQRA, these issues are being resolved at the PB level through the SEQRA process, and mentioned he **hoped** it answers the question.

Stacy Delarede stated she wanted to clarify what Joe just asked about having nothing to do with the project and that's not accurate. Joe stated that's why he said it. Stacy stated that this is their main entrance, the primary function of the project and without the main access, without any main access, there is no project, also adding that this is the basis for this determination. Attorney Martabano stated you are correct and I stand corrected. Chair Loza asked if a single home going in there (on the parcel) with this same process that we're trying to resolve now would it have to be resolved, would they have go as well. Stacy Delarede stated if the home is in residential portion of the parcel, then No. Attorney Martabano added because the B2 district does not allow single family detached homes, adding that is the quandary of this. Attorney Martabano added that if you take a look at what's permitted in the A 1.5 district and the B2 you can't use this to have any uses in the B2 zoning, you just took away B2 zoning, adding that's the issue. Chair Loza stated the A 1.5 zoning, it's 30 feet wide there; Stacy Delarede stated No, the 30 feet wide strip is what the code allows to encroach into the other district. Chair Loza stated then this can go either way. Attorney Lithco stated that the B2 can go into the A 1.5 but not the other way.

Caroline Paulson commented that they should look at the fact we don't want to cut anyone's economic use of their property, but they are not obliged to help someone out of a bad investment. Attorney Martabano responded that the person didn't make a bad investment, because the determination to not use that parcel was made in 2017, his family owned it for decades before the determination was made, and this determination for split zoning that the town applied but then this determination is the trigger event, it was a determination which the Building Inspector pointed out our code doesn't directly address this, well if the BI makes that observation, then how is a property owner who doesn't know how to read codes supposed to know this, so he feels there is another side to the story.

Caroline Paulson commented that we don't really relish the idea of keeping anyone from benefiting, but we're not obliged.

Attorney Martabano stated he feels the Board will make an appropriate determination.

Kelly O'Donnell commented that a point of clarification that the revised applications will be posted on the ZBA website, and no new narrative was submitted that's she is aware of. Attorney Martabano stated there is his letter, but they could provide the SEQRA narrative that explains so much more. Stacy Delarede stated what has changed March 11, 2019 letter to the PB you were going to furnishing information in regards to what has changed and she was looking for those. Attorney Martabano stated he would send them the revised narrative and revised plans to help clarify what was covered tonight.

Joe Douso stated that technically there are 2 ways in and out. Pete Setaro stated technically but that one access is only for emergency and will be used strictly for emergency purposes only and stated the owner has an agreement with the carwash owner for strictly emergency access only.

Attorney Martabano stated they would be providing the revised EAF narrative and revised plans as well.

Chair Loza asked for a motion to set the public hearing.

Motion 1 by Caroline Paulson to set the public hearing for May 14th for the Ferris Woods Appeal application only. Motion 2 by Kelly O'Donnell. All present in favor. Motion carried.

Chair Loza commented to Stacy Delarede that the next agenda item was the Area Variance. Stacy Delarede stated that the area variance is not pertinent at this time for the Board until the final decision is rendered on the Appeal.

Chair Loza stated to make it clear for the public, that no decision on the area variance can be made at this time until the decision is made on the Appeal and information come forward from the PB. Attorney Richard Olson stated that the Board can hear the arguments on both sides but can't make a decision yet.

Motion 1 by Caroline Paulson to hold off on the public hearing for 1702 after the May 14 Public Hearing. Motion 2 by Joe Douso. All present in favor. Motion carried.

Chair Loza as for a quorum check for May 14th ZBA meeting - attendees present stated they should be in attendance.

No open discussion.

Motion 1 by Caroline Paulson to close the April 9th meeting. Motion 2 by Kelly O'Donnell. Meeting adjourned at 8:00 pm.

These minutes respectfully submitted by Pat Atkins, Secretary