

Town of New Paltz
Zoning Board of Appeals
Meeting Minutes
May 14, 2019

Chair Loza welcomed everyone to the May 14th Zoning Board of Appeals meeting held at the Town of New Paltz Community Center at 7:00pm.

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

Also present: Building Inspector Stacy Delarede, ZBA Attorneys Joe Moriello and Richard Olson, Code Enforcement Officer Krissy Granieri.

Review and Approval of Minutes

The minutes from the April 9, 2019 meeting are presented by Chair Loza, who asked for a motion to approve the minutes, with yellow highlights from Kelly which have been noted.

Motion 1 by Caroline Paulson to approve the minutes.

Motion 2 by Joe Douso. All present in favor. Minutes approved.

Public Comments

No public comments.

Motion 1 by Caroline Paulson to close the public comments.

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

Chair Loza stated he was altering the agenda as to the order for the items to be discussed:

Motion 1 by Caroline Paulson. Motion 2 by Steve Esposito. All present in favor. Approved.

Changes are as follows:

1. Stout Area Variance
2. Dinardo Area Variance
3. Cragwood Road Area Variance
4. Ferris Woods Appeal

ZBA 19-50 Stout Area Variance Public Hearing

Alan Stout and his family members approached the Board. Mr. Stout introduced his family to the Board, **his wife Margarete and her sister Suzanne.**

Mr. Stout stated they were before them because **Suzanne** recently came to live with him and his wife, and **she has** difficulty with the stairs in their home, due to **her** disabilities, and want to add an addition to the first floor of their home that would include an additional bathroom and bedrooms for them that would expand their residential use. Mrs. Stout added that the problems of caring for **her** has had an impact on her well-being by having to assist **her** up the stairs throughout the day.

Mr. Stout referenced their surrounding neighbor's signatures that favor the addition he proved to the Board. Mr. Stout stated that if it's necessary to delay the UC PB decision another month, if for legal reasons, or if they might be able to close the public hearing and vote on their variance tonight, as they're hoping there is no further delays, but understands the law must be followed. Chair Loza stated that this wasn't the public hearing yet. Mr. Stout thanked the Board for allowing them to speak.

Motion 1 by Kelly O'Donnell to open the public hearing.

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

Chair Loza asked for the public to speak.

Mr. Paul Congolese stated he was in favor of the Stout application.

After no further comments, Chair Loza asked for a motion to close the public hearing.

Motion 1 by Caroline Paulson to close the public hearing.

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

Attorney Moriello commented that without a response from UC PB, it makes it difficult to move forward without the County, especially if the County came back against the granting of the variance, the Board would need a supermajority vote that would overturn it. Chair Loza stated he is reluctant to offer that. Pat confirmed that the UC PB would meet on June 5, and the Board meets again on June 11th, and that it is on the County's agenda. Chair Loza stated that they would re-open or continue the public hearing. Attorney Moriello stated that they wait for the County input, and re-open the public hearing, after you've technically closed it. Chair Loza stated that the Board cannot make a decision this evening without the County Planning Board, and at the next meeting they will have a recommendation.

Joe Douso stated that they could vote tonight. Attorney Moriello stated the situations that may occur if they don't wait for UC PB recommendation. Mr. Stout stated he felt that UC wouldn't have a problem with his application. Stacy Delarede stated that it's only 6 days from the time UC PB meets and then the next ZBA meeting, and if a decision is made tonight, that wouldn't be binding until after the UC PB comments come back. Mr. Stout stated the Planning Board won't act on it until then as well. Attorney Moriello asked if Mr. Stout had an application before the Planning Board, which Mr. Stout responded that the Planning Board sent them here with a favorable referral. Chair Loza asked if the Planning Board had sent their application to UC PB. Pat confirmed there was no motion yet by the Planning Board to send to UC. Discussion on how to get it through quickly. Attorney Moriello stated the problem is, as Stacy stated too, they would still have to wait for it to become effective after the County comments come back. Pat to ensure that the application before the Planning Board is sent to UC PB. Attorney Moriello stated to ensure the list of names of the neighbors who supported the variance application also be included to County.

ZBA 19-81 Dinardo Area Variance

Steve O'Brien of Nejame Pool, representing owner, A. Catherine Dinardo, approached the Board.

Chair Loza stated that Mr. Dinardo did not have anything there for the Board that he was there acting on their behalf. Mr. O'Brien stated there was an authorization form in the Building permit application, and wasn't sure why it wasn't there for the Board. Stacy Delarede produced the authorization form for the Board.

Mr. O'Brien stated that they want the in ground pool in the side yard, very rural area with no neighbors who can see the pool there, and there is no other place to put the pool due to wetlands in the back of the house, without damaging the wetlands or the property, just have runoff and no erosion issues, and put in the best place possible. Stacy Delarede explained to the Board the parcel consists of 16 acres now after purchasing adjoining adjacent parcels and adjusting the property lines. Pool in the side yard, there are wetlands on the property and pool location is not in the 100 foot buffer. Caroline Paulson commented on a past conversation with her lawyer friend and spoke about the technical aspect of the law vs. the spirit of the law.

Mr. O'Brien showed the pictures of the plans for the pool, and location, showing the Board where the pond was located in the rural area, and the pond is visible before the pool. Caroline Paulson commented that the pool was sheltered and not visible, impacted by the lawyer friend technical aspect of the law. Attorney Moriello stated that is exactly why zoning boards were created so to give people relief with new zoning regulations and empowered to give reliefs (from the law).

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

Motion 1 by Kelly O'Donnell to set the public hearing for June 11th.

Motion 2 by Joe Douso. All present in favor. Motion carried.

ZBA 19-85 Craigswood Road Area Variance

Elizabeth Kelly, representing the Owners, approached the Board. Ms. Kelly stated they were there to request a variance for placing a pool in the side yard as the property is in a wet area, and if they were to place the pool in the lawn area would raise environmental concerns and not to go into the wooded area, noting that they were there as a request from the Planning Board. Ms. Kelly showed on the map where the property was located. Caroline Paulson stated that it was the most wonderful proposal she had ever seen.

Attorney Moriello asked why they were before the Planning Board. Ms. Kelly stated that they were before the Planning Board for a wetlands long form, as the wetlands buffer is affected, as the house was built before the

wetlands code. Attorney Moriello commented that the Board must be clear on the pool location in proximity to the wetlands in order to grant a variance, and the Planning Board would still have to determine if the project can happen in the wetlands. Ms. Kelly noted that they had received a favorable recommendation from the Town's wetlands inspector after meeting with him. Attorney Moriello stated that this Board should receive a recommendation from the Planning Board. Pat to check if the Planning Board is planning to make a recommendation to have it before the public hearing (June 11th). Ms. Kelly stated that the Planning Board was waiting for the ZBA's determination. Stacy Delarede stated that the law requires the Planning Board make a recommendation to the ZBA in regard to the variance. Pat to check with PB for a favorable recommendation to the ZBA.

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

Motion 1 by Caroline Paulson to set the public hearing for June 11th. Motion 2 by Steve Esposito. All present in favor. Motion carried.

Attorney Moriello has left the meeting for the evening as he has recused himself from this next application. Attorney Richard Olson will advise the Board.

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

Chair Loza stated the Appeal of the Building Inspector's interpretation is next on the agenda.

Chair Loza stated he has one person to speak and asked Michelle DiDonna to come forward.

Michelle DiDonna of Brouck Ferris Blvd., read to the Board members in her memo to the Zoning Board which supports the Building Inspector's determination as the use (the proposed development) is not allowed in the A 1.5 zone. Ms. DiDonna provided copies.

Chair Loza stated he has several letters before him, and asked Attorney Charles Martabano, representing Ferris Woods, LLC, to approach the Board. Attorney Martabano stated he had received the memo from Attorney George Lithco just the day before, and asked that he be permitted to submit a response to that memo as he would need time to do that, but asked to keep the record open. Chair Loza granted his request. Chair Loza asked if the Board had read the memos, which members agreed was a lot to read.

Attorney Martabano stated that the memos had a lot of information in them, as they are significant when it comes to interpreting the code. Attorney Martabano talked about the law, and municipality's writing common laws, and how they should be written correctly or how they'd be construed if not written properly to favor the property owner, when is not a clear and explicit provision in the code. Attorney Martabano continued to explain the Ferris Woods project, which has uses allowed in the B2 district but are not however, permitted in the A 1.5 district, and the property owner was looking to build a multi-family use but could have their B2 zoning rights taken away, indicating that the zone in question, A 1.5 was one tiny strip of 2,255 square foot, that the Town set that the zoning line for, and that a single family house would be allowed there, but not multi-family as a provision in the code for years. Attorney Martabano stated he's trying to understand why allowed access is only for single family residential and not those for multi-family, as this is an access road, or accessory use, as then it would be allowed in both districts. Attorney Martabano concluded by asking the Board what justification they would have by denying the applicant their rights in the B2, as it be taken away for zoning of over 30 acres zoned for business purpose, stating the code doesn't warn them they could have their rights taken away as it's not written.

Joe Douso asked how long the property had been established, with applicant Bart Panessa stating over 40 years, with Stacy Delarede adding that the zoning was established in 1976. Joe Douso asked if the other properties knew of this, that were attached to the properties at one time, but sold off, with additional input from Stacy that several subdivisions occurred that were all part of the same lot originally. Attorney Martabano stating that in 2017, they had no idea and if the code had a provision in the code warning of this, and that this not a self-created hardship, and not aware of the determination until 2017.

Attorney Martabano stated he understood Joe's questioning as it was important that they all understand that this 50x45 foot strip of land, that is a project recently downsized 20%, is the only thing left is the access road, adding where case laws have stated that there are exceptions to every rule, and when taking access away to a public road you raise a constitutional issue. Joe Douso asked if the emergency access onto 299 cannot be used as the main access. Stacy Delarede stated that they can't build the project without access, which access is the primary use, and the problem is primary use is not allowed in the A 1.5 district, but is permitted in B2. Stacy added there are other alternatives other than coming out onto Brouck Ferris road. Attorney Martabano stated as for the emergency access, per Bart Panessa stated is through the wetlands, through the car wash driveway per the owner of the carwash. Joe Douso stated then so nothing can be built in the wetlands, but Stacy stated that there is a provision in the wetlands law, that Attorney Lithco explained that the wetlands law provides a provision for a permit in the buffer, as well as another condition for the property owner who cannot access public way, and that would not have a substantial impact on the wetlands, to obtain a wetlands permit, adding that it's not impossible.

Bart Panessa stated there is no way that a road would be allowed by the Town in the wetlands, and every environmental person in the area and surrounding areas, would object, adding that he cannot even put a 6 inch well in the buffer area, so it is not an option for them.

After brief discussion further on the access road through the wetlands, Attorney Olson stated that they should get back on track.

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

Motion 1 by Caroline Paulson. Motion 2 by Kelly O'Donnell. All present in favor. Motion carried.

Attorney Martabano stated to the Board that taking the comments made here tonight into consideration, and they take the time, as this a weighty decision for the Board to make, and that the public hearing be continued to the next meeting, and would get a full response back next week.

Chair Loza stated that they all read the letters provided to them. Attorney Lithco asked the Board as they read the letters, to try to separate things into appropriate categories.

Chair Loza asked about the ruling for within 500 feet of a county road. Stacy Delarede stated that is an Ulster County Planning Board requirement for referrals.

Chair Loza stated next meeting is June 11th. Attorney Martabano stated he would get back to them.

Motion 1 by Joe Douso to continue the Public Hearing until June 11 meeting. Motion 2 by Caroline Paulson. All in favor. Motion carried.

Administrative Issues

Chair Loza stated quorum check for June 11th meeting – all present to attend.

No further discussions.

Motion 1 by Caroline Paulson to close the meeting. Motion 2 by Joe Douso. All present in favor. Approved.

Meeting adjourned at 8:30 pm. Minutes submitted by Pat Atkins