

Zoning Board of Appeals

Final Meeting Minutes

June 11, 2019

Call to order: 7:00 pm by Chair Loza welcoming everyone who was attending at the New Paltz Community Center.

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

Also attending: Attorney Joe Moriello, Building Inspector Stacy Delarede, Code Enforcement Officer Krissy Granieri, and Attorney Richard Olson.

Chair Loza stated that the minutes were adjusted for correcting the Stout information on how many people were living there. With no further comments, Chair Loza asked for a motion to accept the May 14, 2019 minutes as presented and corrected.

**Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All present in favor. Motion carried.**

**Public Comments** – none

**ZBA 19-50 Stout Area Variance**

**Motion 1 by Kelly O'Donnell to re-open the public hearing for the Stout Area Variance.**

**Motion 2 by Caroline Paulson. All present in favor. Motion carried.**

No one came forward to speak (during the public hearing) on the Stout Variance.

Mr. Alan Stout explained to the Board he was seeking a variance for a 504 square foot addition to his home as his property is split in 2 zones (R1 and B2) and his house is located in the B2 district, and because of B2 code for non-conforming use, he has to seek a variance. Mr. Stout added that all his neighbors surrounding him are residential use (R1). Mr. Stout asked if he was bound to the 18x28 addition size (504 sq. feet) that was being proposed, if approved, to this particular size.

Chair Loza stated he is not bound by the size but bound by condition, and added that also the variance does not go with Alan Stout, but goes with the property, so if they were to sell the property it stays with the property. Chair Loza added that they received no County Impact (from UC PB referral), which Mr. Stout acknowledged as having received that information.

Attorney Moriello commented on the size plan, stating that the variance asks for 504 sq. feet, and asked Mr. Stout if he expects the square footage to change. Mr. Stout stated he was thinking of bumping out a window seat by adding 15 square feet. When asked by Chair Loza, Stacy Delarede said she can't answer since she doesn't know how that window seat is designed, and stated she said she needs to know what the approval will be for. Mr. Stout stated he

originally went to the PB with 16x28 addition, and after discussion, changed the size. Mr. Stout asked if the number is significant as being presented. Attorney Moriello stated he didn't know if it makes a difference to amend the application to no more than 520 feet, but doesn't think it's proper to amend for 600. Joe Douso commented on the window seat describing the difference for the window seat being added with more square footage. Stacy Delarede commented that if the ZBA issues a variance for 504 square feet, the variance is for 504 square feet, and she has no problem with that, and added if it's issued for 508 square feet, she has no problem, but if it's for over 510 square feet she said she'd probably have a problem since it wasn't authorized. Attorney Moriello commented that the Board could grant a variance not to exceed 510 square feet of floor area and that should satisfy the applicant.

With 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 in favor. Public hearing closed.**

Caroline Paulson stated that they had hear from Ulster County Planning department, and asked if they heard from New Paltz Planning, to be clear about the permissions needed. Attorney Moriello stated that the Town Planning Board on March 25 motioned that they were favorable in granting the variance from the ZBA.

Chair Loza stated that Mr. Stout had to answer the questions he will read with an answer of Yes or No.

1. No
2. No
3. No
4. No
5. No

After no further comments or questions, Chair Loza asked for a motion to approve this variance to not exceed more than 510 square feet of floor space.

**Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All present in favor. Motion carried.**

Mr. Stout thanked everyone for their help.

#### **ZBA 19-Dinardo Area Variance**

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

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

Chair Loza asked if there was anyone there to speak about the variance application on 170 Portuese Lane. Chair Loza commented to Steve O'Brien, owner's consultant from Nejame Pools, that they had received the paperwork for Nejame Pools to speak on behalf of the owner.

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

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

Mr. O'Brien stated that the pool location was chosen for the side yard because of a pond, rocks, how the property is situated, not obstructing any views, and is hidden.

After no further questions from the Board, Mr. O'Brien was asked by Chair Loza to answer the 5 questions with Yes or No:

1. No
2. No
3. No
4. No
5. Yes, it is self-creating

Chair Loza asked for any further discussion from the Board. Joe Douso asked about the two water courses, or wetlands, running through the property. Mr. O'Brien stated they were outside the buffer area, and no trees will be removed for the pool, and a tree will be removed by the new garage only and those there will block the pool from being seen.

Chair Loza asked for a motion for approval of the variance.

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

Mr. O'Brien thanked the Board.

#### **ZBA 19-85 46 Cragwood Road Area Variance**

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

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

Roger Hayes, parent to owner Christopher Hayes, read a memo from Kate Shaw and Chris Hayes in their absence to support the request for the area variance.

Chair Loza read from page 3 of the wetlands report which "indicated there are no wetland impacts proposed to regulated waters of the United States. Impacts are proposed to the Town of New Paltz regulated 100 foot wetland buffer", and noted that the delineation was completed

in September 2018. Chair Loza also commented that the referred the location is sensitive to the areas of the wetlands and will have no impact on the wetlands surrounding the property.

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

**Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All present in favor. Motion carried.**

Elizabeth Kelly, consultant for the owners, discussed the location of where the pool will be located in the side yard of the property, and seeking relief for that, showing the map of the proposed pool on the property to the Board members. Ms. Kelly noted that if the pool were to go in the back yard, the woods would have to be cleared and have an impact on that area.

Joe Douso asked if the area gets flooded when Springtown gets flooded. Ms. Kelly stated no, that it is in a higher elevation, but the whole site is quite wet, that's why she's before the Planning Board as well, near the base of the mountain and coming down, but drainage will be improved to drain around the house, while also noting that the lawn is the drier part of the property as that is why they'd like the pool located there. Caroline Paulson noted that Springtown Road has not been flooded since Hurricane Irene in 2011 and that's not a big issue.

Stacy Delarede wanted to clarify that this property is nowhere near the floodplain; it's located at the base of the mountain.

Attorney Moriello commented to the Board which may be helpful for them, is that the applicant is before the Planning Board, and even if the variance is granted to allow the pool to go in there, there is still the request for the wetlands permit by the Planning Board to be able to get approve. So if the Board grants the variance, it is not approving the construction of the pool. And they (the Planning Board) may not issue the permit as the PB review on the wetlands, and the Board (ZBA) is not giving them permission to construct it.

Chair Loza commented that they need the ZBA variance to place it in the side yard. Attorney Moriello stated like the Stout variance, you granted the variance but he still has to meet the regulations, so this application is similar. Attorney Moriello stated the Board has a letter of recommendation from the Planning Board. Chair Loza read the memo from the Chair of the Planning Board, verifying that Ms. Kelly received the memo, which she did.

Chair Loza read the 5 questions with a Yes or No answer to Ms. Kelly:

1. No
2. No
3. No
4. No
5. Yes Self-creating

After no further comments or questions from the Board, Chair Loza asked for a motion to approve the variance.

**Motion 1 by Caroline Paulson that the Board approves it. Motion 2 by Kelly O'Donnell. 4 in favor, 1 opposed. Motion carried.**

Ms. Kelly thanked the Board.

Prior to the leaving the meeting, Attorney Moriello asks for a quorum check; Kelly won't be present, but Caroline, Steve, Joe and Leonard will be present. Attorney Moriello leaves the meeting at 7:40pm.

Attorney George Lithco for the Building Department joins the meeting and takes his seat.

Chair Loza asked for a motion to open the public hearing for the Appeal for the Building Inspector's Interpretation.

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

Chair Loza announced the public hearing is open.

Michelle DiDonna, stated she is there to support the Building Inspector's interpretation of the building code regarding the application of the Ferris Woods Apartment Complex.

Brenda Hay, from 4 Grace Avenue, stated that she supports Stacy's (the Building Inspector's) interpretation, and supporting Michelle's fight, noted that she has the utmost faith in her ability to represent the Town professionally after working with her for an addition on their home.

After no further comments from the public, Chair Loza asked if the Board had any questions or uncertainties in regard to the explanation of what is being put forward to them. Caroline Paulson commented that at time, that with all the letters and commentaries from the Attorneys, there's a lot of issues, and sorting them out, in terms of the appeal of the Building Inspector's decision, and then the variance, it's a little muddy to her, and asked for a little clarity to go through the factors of the appeal. Attorney Martabano, consultant for the Ferris Woods, LLC, stated that is why they are here tonight for the interpretation made by the Building Inspector. Attorney Martabano stated that is only what they were here tonight for, not yet for the variance, as it may not be needed. Attorney Martabano stated that there is one thing he wanted to point out, in addition to his past arguments he made, that when Stacy made her decision, there were other components of the project made in the district, but what we didn't look at was the accessory use, and read the accessory use code (140-8), noting after he read it, that it is on the same lot, a split zone, but the same lot, under the code it's P-Permitted. Attorney Martabano handed out the code page for accessory use.

Chair Loza asked if anyone had questions. Joe Douso stated there is a lot of grey area, as he looked at the handout of the code of the accessory use. Attorney Lithco stated he would like to address the specific issue that was raised tonight and that he also had some comments on the letter and he didn't want to mix the two up. There is a new issue before the board that Mr. Martabano is trying to raise. And the specific issue is whether or not the driveway is part of the

primary use or is an accessory use. During the initial application, if you recall, the pavilion and there were septic facilities and other parts that were proposed on the site plan. In the specific case of the pavilion it was considered accessory. Because the accessory use is normal and customary and not always there. You can't do this project without a driveway. You can't do it because it's an integral part of the project itself. But there is also a basic issue where you can't construct a building without having access to a building by an improved driveway. You can't do it. It's not an option. It's not something you choose to do or not to do. You can choose whether or not you want to put a shed in your back yard or you can choose if you want to put a swimming pool in your backyard but you can't choose the septic and you can't choose to put a driveway or not put a driveway. It's required by code, it's required by state law. So this issue that has been raised about an accessory use is unfortunately misguided.

**Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All in favor. Motion approved.**

Board members leave for executive session at 7:58pm.

Board members return from executive session at 8:25pm. Chair Loza asked Attorney Martabano if he had any further comments. Attorney Martabano **stated they will rely upon their submission and our main argument obviously is strict instructions of the zoning code and looking at the Building Inspector's determination on that matter, and indicated he had nothing more to add.**

Stacy Delarede stated George would like to speak on a few things.

**Motion 1 by Caroline Paulson to come out of Executive Session. Motion 2 by Kelly O'Donnell. All in favor. Motion approved.**

Attorney Lithco commented with brief points on the last memo from Attorney Martabano (dated May 28, 2019) on Page 1 the case Ruby v. Sposito, Attorney Lithco stated that this is a criminal case; on Page 3, the case Boni Enterprises, LLC v. Zoning Bd of Appeals of Town of Clifton Park, Attorney Lithco stated that this was before a court, not the Zoning Board; on page 5, after a search on the internet for "no driveway shall provide access to a lot", Attorney Lithco stated he found 1549 municipalities (62 cities, 932 towns, and 555 villages), using a visual aid to show the listing, that do not have the language "no driveway shall provide access to a lot", and no conclusive proof the language has to be there; on page 7 Attorney Lithco to the decision of Korcz v. Elhage that helps support Stacy's determination.

Stacy Delarede commented on how she makes determinations on how the Code applies to specific matters that come before her as the Zoning Enforcement Officer, emphasizing to the Board that they have the powers of that office, and will now have to apply the Code as if they were the Zoning Enforcement Officer themselves. Stacy informed the Board of her process for determination, and concluded she rendered a determination that the driveway, which is located in the A1.5 district, is not permitted without obtaining a use variance. Stacy also informed the Board that it is not her job to interpret the zoning ordinance and determine

whether or not the Town Board adhered to judicial doctrines such as “the doctrine of strict construction of zoning codes”, and also stated that it is not her job to determine if the zoning code is constitutional or violates someone’s constitutional rights, while also adding that it is not her job to look at other Town Zoning Codes to determine if the provisions of our Town Code are fair, constitutional or correctly written. Stacy reminded the Board that it is now their job, after noting her determination was that the access road, as part of a primary use, cannot be located in a district where the use is not permitted, that for this appeal, is for them whether they would make that determination.

Attorney Martabano spoke next about the New York Law for Zoning, and how this zoning has affected the property for decades, with emphasis that the Town code does not specifically address it, and asked where it is in the code. Attorney Martabano also commented on Attorney Lithco’s earlier comments, stating when a parcel is denied access to a public street, there is an exception which raises the constitutional issue that is depriving his rights under law.

Attorney Olson stated they’ve heard all arguments and the Board has to render a decision.

Chair Loza asked if anyone had any further comments. Joe Douso stated he needs time to read it and digest, adding he personally wants more time, and reach a decision that he feels justifiable. Caroline Paulson agreed. Chair Loza stated they will render a decision at the next meeting.

Chair Loza asked for a motion to close the Public Hearing.

**Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All present in favor. Motion carried.**

Attorney Martabano thanked the Board.

Chair Loza asked for a motion to continuance for a decision on the Building Inspector’s recommendation to the July 9<sup>th</sup> meeting.

**Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All present in favor. Motion carried.**

Quorum check - done earlier

Open Discussion - none.

Chair Loza asked for a motion to close the meeting.

**Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All present in favor. Motion carried.**

Meeting adjourned at 8:55pm.