



story garage on the survey was actually surveyed by the engineers and surveyors. The survey clearly states the edge of building to be 17.1 feet from the property line and one can measure from the survey that the deck and steps are a little closer to the property line.

Mr. Polhemus said that they measured as best they could the pins and points that were there to match the survey, and the distance from the corner of the building to the property line of 17'1" appeared to agree. He added that from the post on the back steps to a similar point appeared to be about 15'3".

Mr. Johnson said the survey is by licensed surveyors, Paggi, Martin & Del Bene.

Mr. Johnson said as the public hearing is still open was there anyone in the audience who wished to speak for or against the application. There being no comment from the public Mr. Johnson made a motion to close the public hearing. Mr. Bisceglia seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Mr. Johnson said the situation is that a large structure was built. A variance was granted for a smaller building and the actual building is closer to the property line than the original request. The neighbor also has a pre-existing nonconforming building that is very close to the property line which is not quite as large, but large enough. The existing garage that Mr. Figa built is substantial and is clearly visible from the secondary structure on the neighboring property.

Mr. Johnson said there were two issues here. One issue concerned the fact that the building is closer to the property line than the variance that was initially granted. The other issue was that when the variance was granted it was for a garage with a crawl space above and that was a substantial reason why the variance was granted. The plans of the building that were initially presented indicated one thing but what was actually built was substantially different.

Mr. Johnson said their concerns were about the variance for the building but the Zoning Board of Appeals is part of the town's overall zoning process and they might want to consider the overall process as part of the decision.

Mr. Figa asked to speak. Mr. Johnson reminded him that he was still under oath. Mr. Figa said that Mr. Johnson kept referring to the second floor as a crawl space. He said that his original plan submitted to the building department was for an 8' ceiling and nothing was changed except for the pitch of the roof.

Mr. Johnson said the truss plan labeled as "truss plan filed with application" but not stamped as received indicates a height of approximately a little less than 7' in the interior space. Mr. Johnson also noted in the original variance that was granted that it was said to be a crawl space.

Ms. Swanson said her position is that they can only consider the request before the board which is for an additional variance of 6 feet and anything outside of that should be for the zoning enforcement officer to take into account so that was all that she was prepared to

vote on that night. Ms. Swanson continued that she would be willing to grant an additional 3' but not 6'. The 3 feet would allow for the building that is there but not be part of the stairs as they were not part of the original request.

Mr. Polhemus said the building inspector had made good recommendations including taking the stairs off the back. Mr. Polhemus said he thought the board should add closing off the door and having no windows overlooking the neighbor's structure at the back. The building inspector had also suggested that there be an interior pull down stair but Mr. Polhemus felt the kind of interior stair should be between the building inspector and the owner. He felt that the building inspector's suggestion that the attic area not be finished off was a good recommendation.

Mr. Bisceglia said he agreed with the rest of the board and he thought the recommendations from the building inspector were correct .

Mr. Johnson commented that the points that Ms. Swanson brought out were appropriate and that the board was considering a setback variance but, given the visual impact of the building, he felt some restrictions could be placed on the variance to limit the visual impact on the neighbor.

The structure is larger than the ZBA initially envisaged but it is in the style of the existing house. The garage is not very visible from the road. The main visual impact is to the rear. That property has an existing building which is about the same size as the garage and about the same distance from the property line. The board proposed conditions to limit the visual impact of the structure on the neighbor.

Mr. Polhemus made a motion to grant a variance for relief of an additional 3 feet from the property line with the following conditions based on the building inspector's recommendations: take out the stairs on the back; the door be closed off and no openings towards the neighbor's structure; access to the second floor will be through interior stairs only; the attic can be no further finished off; the second floor is strictly for storage and not to be considered living space in any way. It was noted that the floor was plywood and there was no insulation or sheetrock on the walls or ceiling. There were electric ceiling lights but no outlets. Mr. Komorsky seconded and the motion carried unanimously. (As previously mentioned, Mr. McPeck recused himself from this application) AREA VARIANCE GRANTED WITH CONDITIONS

### **NEW BUSINESS**

03-10-01      AREA VARIANCE: STEPHEN KONDAS, 380 FREEDOM ROAD,  
PLEASANT VALLEY, NEW YORK Grid No. 6462-01-191677  
Seeking relief from Chapter 240-26 A. that allows one single family residence on a property, in order to proceed with an application for a 2-lot subdivision that will result in two single family residences on proposed Lot #1.

Stephen Kondas, owner and Donald Salmon, LS of the firm of Devine Surveying were present to represent the application. Mr. Johnson led the swearing in of the applicants.

Ms. Swanson said for the record, she wished to recuse herself as she is an adjacent property owner. Alternate Mr. Komorsky became a full voting member for this application.

Mr. Johnson asked the applicants to explain their proposal. Mr. Kondas said he is a dairy farmer on Freedom Road. He said his parents left a will stating that Mr. Kondas should receive both dwellings on three acres of property to be subdivided off the 141 acre farm. Mr. Kondas said when he appeared before the Planning Board it was suggested that he do two subdivisions so that the main house would have 3 acres and the tenant house would have 3 acres but he did not want to do that because it would take away from the way it was supposed to be.

Mr. Johnson asked when the cottage and main house were built. Mr. Kondas said the main house was built in 1866 and the cottage was built in the 1940's. Mr. Bisceglia asked if the homes had individual wells and septic. Mr. Kondas said there is one well with ample water for both dwellings and individual septic. Mr. Kondas indicated on the map where the well and septic systems were located.

Mr. McPeck asked who lives in the homes. Mr. Kondas said he lives in the main house and the cottage is rented out to a tenant. Mr. McPeck asked who, in the future would be responsible for the well. Mr. Kondas said the owner of the main dwelling would be responsible.

Mr. Johnson said this is a unique parcel. The town zoning permits one residence on one lot so that there would not be a bunch of close-together residences. There was some discussion on how difficult it would be to create two new lots with the way the two houses and the dairy barns are situated.

Mr. Johnson asked if there was anyone in the audience who wished to speak for or against the application.

Carole Daniels of Freedom Road said she is a neighbor of Mr. Kondas. Her stepfather and mother formerly owned the farm and she agreed that to subdivide and make two separate lots would take away from the aesthetics, and the value of the property would be to keep the two buildings intact as one lot.

Marco Caviglia, 356 Freedom Road asked to see the proposal. Mr. Caviglia asked where the subdivision would be. Mr. Kondas explained how the property would be divided. Mr. Caviglia saw where his property was in relation to the subdivision.

Mr. Komorsky asked if a barn/garage was also to be included in the proposed subdivision. Mr. Kondas said it would be.

Mr. Caviglia said as he understood it, the long range plan was to subdivide the existing farm into a development and his concern was where a future road might go. It was explained that there is no proposal for a road at this time. Mr. Caviglia asked the

surveyor where, in his opinion a road might go after the 2-lot subdivision has been approved. Mr. Salmon said that is not what he had been hired to do.

Mr. Johnson pointed out that the proposed lot would take up less space along the road than if it was broken up into two lots and that would limit even more where any future road might go.

Kevin Donohue, 280 Noxon Road asked what the variance application was for. Mr. Johnson said it was to allow 2 dwellings on one lot. Mr. Donohue queried the code section quoted and drew the board's attention to what he felt was the correct section of the code which should be Chapter 240-26 A. Mr. Johnson verified that Chapter 240-26 A. was the correct section of the code.

Mr. Johnson said the board had received a referral from the Dutchess County Department of Planning & Development indicating that this was a matter of local concern.

Ms. Swanson said that upon reading the documentation she had noticed that a Robert Kondas was also listed as an owner of the parcel and the board had not received anything from him stating that he was in favor of the request. Ms. Swanson had checked the planning board application and in May of 2009 he was in favor of the plan but she had no way of knowing if things had changed since then. He appeared to be a one third owner and if the variance is granted the board should make sure Robert Kondas is in agreement with the proposal. Ms. Swanson added that the fact that there were no boundaries for the lot outlined in the will is a concern and she felt Robert Kondas might have concerns about the placement of the boundaries.

Mr. Johnson said if they grant a variance it could be subject to approval by all people who own the property.

Mr. Polhemus asked the applicant to show on the map where the boundaries of the new lot would be. He asked Mr. Caviglia if he was satisfied with the 400' separation. Mr. Caviglia said he did not know what the town specifications were.

There being no further comments from the audience, Mr. Johnson made a motion to close the public hearing. Mr. McPeck seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Mr. Johnson said this is an older development with some historic interest in the town. The request is to allow a subdivision with two dwelling premises on it and some other structures. The application will have minimized the space of the two buildings in that there will be 2 on one 3-acre parcel as opposed to two separate 3 acre parcels. Breaking up the land will be an easier benefit for the applicant. The area is quite rural and any further development would have to be subject to standard zoning so this particular subdivision would not generally affect the area and might keep it more compact and compatible with what is there now in the sense that the buildings and barns would be all on one lot and in the control of one owner.

Mr. Bisceglia asked what would prevent someone in the future adding on one of the houses to increase the square footage. Should a restriction be put on adding to the size of the dwellings? Mr. Johnson said by granting the variance both structures would be nonconforming and there might be an issue of expanding a nonconforming structure. If that is a concern the board might add a desire to not expand the buildings.

Mr. Johnson said in general there is certainly enough land to split off two conforming lots and it would appear that they could meet setback requirements although it would be close as there is about 80 or 90 feet between the two structures. On the other hand there is clearly a benefit to the applicant to keep the structures together, and perhaps to the town in terms of maintaining the integrity of the property.

Mr. Caviglia said he did not understand why the applicant is not following the town requirements of creating two lots because there is ample space for the two lots and where is the hardship?

Mr. Kondas said he inherited the hardship in the will and that is why he is requesting the variance. Mr. Johnson said the will indicates that Steven J. Kondas Jr. is bequeathed a Victorian house, a tenant house, a 3 car garage on 3 acres of land which is the justification to put the two houses on one parcel. It is true that there is a large parcel of land of approximately 140 acres so it would be possible with negotiations within the family to establish 2 conforming lots. There are separate septic tanks but one well. If the board required 2 separate lots it would also require the drilling of another well.

Mr. McPeck made a motion to grant the variance to allow 2 dwellings on one lot. Mr. Komorsky seconded and the motion carried unanimously. (As previously mentioned, Ms. Swanson recused herself from this application). AREA VARIANCE GRANTED

Mr. Johnson summarized that the board had granted relief from section 240-26 paragraph A of the LaGrange Zoning law to permit 2 single family residences on one lot which would be approximately 3 acres. The board recognized the historic nature of the buildings on the proposed lot and felt that the value of keeping the structures on one single lot where they would be under the control of one owner provides a reason for getting a variance from the zoning code, with the condition that all other owners, specifically Robert Kondas agree to the division of land and this could be done by letter.

There being no other business before the board, Mr. Johnson made a motion to adjourn the meeting at 8:36 p.m. Mr. Polhemus seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley  
Zoning Board of Appeals Secretary