

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, April 6, 2009 at the LaGrange Town Hall, 120 Stringham Road at 7:30 p.m. Chairman Tracy Johnson called the meeting to order. Board members Paul Bisceglia, Joe Zeidan, Nancy Swanson, and alternate Marc Komorsky were present. Aaron McPeck was absent. Also present was Rebecca Valk Esq. of the firm of Van DeWater & Van DeWater, town attorneys

Mr. Johnson made a motion to accept the minutes of March 2, 2009 as submitted. Mr. Zeidan seconded and the motion carried unanimously. MINUTES ACCEPTED.

OLD BUSINESS

11-08-01 VARIANCE: KEVIN COLLINS, 6 DEPOT LANE, LAGRANGEVILLE, NEW YORK. Grid No. 6560-04-525134

Rescind board's decision of January 5, 2009. Rehearing of Mr. Collins request seeking relief from the code that states that a nonconforming use cannot be expanded in order to construct a 30' x 40' addition to an existing structure

Mr. Johnson stated that the board is considering re-hearing the Collins variance request. Mr. Zeidan moved that the board adjourn the meeting and go into executive session so that they can discuss with the town's attorney the legal ramifications. Mr. Johnson seconded and the motion passed unanimously. MEETING ADJOURNED

At approximately 8:10 p.m. Mr. Johnson called the meeting back to order again after the executive session.

Mr. Johnson said the first item is for the board to discuss whether they should re-hear the application. He continued that there are some procedural issues with the application and the town attorney has indicated that it would be best if they re-open the application and re-hear it. Mr. Johnson asked for any discussion from the board. There were no comments. Mr. Johnson made a motion to rehear the application of Kevin Collins which the board had rejected on January 5, 2009. Mr. Zeidan seconded and the motion carried unanimously. DECISION MADE TO REHEAR APPLICATION

Mr. Johnson said since there was a unanimous agreement they can proceed with the re-hearing.

Mr. Johnson said the initial application was for an area variance to expand a nonconforming business. The applicant indicated that it should be an area variance because he claimed no nonconforming use would be undertaken in the expanded structure. Mr. Johnson referred to the zoning code, Chapter 240-29 A. and quoted as follows:

"It is the intent of this section that nonconformities are not to be expanded, so as to insure eventual compatibility of neighboring land uses and that the existence of any

nonconformity shall not of itself be considered grounds for the approval of a variance for any other property.”

Mr. Johnson said it seems from this section of the code that the town is working towards making the land uses more compatible within the various zones with the intent to eventually remove nonconforming uses in an appropriate manner. It is specifically stated that the town does not wish to expand nonconformities to the extent possible.

Mr. Johnson quoted section 240-29 F. paragraph (1) relating to enlargements: “Any nonconforming use of land shall not be enlarged, extended or altered, and any building or any structure or part thereof devoted to a nonconforming use shall not be enlarged, extended, reconstructed or altered, except where the result of such changes is to reduce or eliminate the nonconformity.”

Mr. Johnson said the intent of the town in this section seems to be that it is not particularly related to a size of a building but to an expansion of a nonconforming use which would be inappropriate with the intent of the law which is to try to remove nonconforming uses. The applicant has indicated that the expansion would not be used for business purposes and the board needs to consider what sort of precedent they would be setting if they allowed any business in the town which is nonconforming to expand the area of its building by claiming that there would be no nonconforming use. There is a precedent for the board to be generating a new interpretation of the law that may go beyond what the town was contemplating when they set up the original code. There is some case law indicating that the board would be improperly invading the legislative authority if they proceeded to grant a variance based strictly on an area variance. The town attorney cited a Van Dusen v Jackson, 35AD 2nd 560 2nd department 1970 which had the opinion that when a variance violates the general intent of the zoning law the ZBA has improperly invaded the legislative authority of the town board.

Mr. Johnson asked if there were any other comments or questions. Ms. Valk said she wanted to summarize that the chairman was laying out to discuss with the board whether this should be treated as an area variance or a use variance and she believes that is open for discussion.

Mr. Bisceglia said he is in the position of looking at this as a use variance. It is an extension of a nonconforming use and he feels an area variance is not applicable. Mr. Zeidan agreed. He said, given the size of the building and most of the equipment that is going in there, he believed it should be considered as a use variance.

Mr. Johnson moved that, having considered the town code, the specifics of the code that the board make a finding that this should be considered a use variance as opposed to an area variance, noting that since they are making a finding, this is a Type 2 action under SEQR and that if they do the finding, the applicant would be requested to re-submit his application as a use variance with the various requirements that a use variance has. Mr. Zeidan seconded and the motion carried unanimously. **DECISION MADE THAT THIS SHOULD BE CONSIDERED A USE VARIANCE**

Mr. Zeidan carried out the swearing in of Mr. Thomas B. Halley, attorney for the applicant.

Mr. Halley said as he understood it the board had found this to be a use variance which requires a new application and considers this a Type 2 action under SEQR. Was that correct? Mr. Johnson said, no that is not correct. He said that their interpretation is a Type 2. The use variance application would require a SEQR determination.

Mr. Halley referred to his hand-written notes, and he had written that the board had found this to be a use variance – type 2 under SEQR – resubmit under use variance.

Mr. Johnson explained that the board had made an interpretation about what kind of variance was required. Mr. Halley wanted to make sure his notes were correct. His note had said “resubmit as a use variance” and when that would be done it would seem that would have to comply with a Short Form EAF or whatever it takes. Ms. Valk said she believes they understand each other, they are just saying it in different ways.

Mr. Halley added that they obviously disagree. It is their position that he understands the zoning board saying here is the intention of the town, here is their legislative import, but a variance by definition is something that says the law says this but we are not going to require to file that. That is their position, that they are entitled to a variance. He agrees when the town says this is what the ordinance says but that is what the zoning board is here for, to allow somebody to do something that is at variance with what the zoning ordinance says.

There being no other business before the board, Mr. Johnson made a motion to adjourn the meeting at 8:25 p.m. Mr. Zeidan seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley
Zoning Board of Appeals Secretary