

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, May 4, 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, Aaron McPeck and alternate Marc Komorsky were present.

Mr. Johnson made a motion to accept the minutes of April 6, 2009 as submitted. Mr. Zeidan seconded and the motion carried unanimously. MINUTES ACCEPTED.

NEW BUSINESS

05-09-01 AREA VARIANCE: GARY AND KELLY NEWKIRK, 12 HIGH POINT DRIVE, POUGHKEEPSIE, NEW YORK Grid No. 6359-02-828974
Seeking relief from the minimum lot size in order to keep more than one horse on their 3.21 acre parcel in an R-40/60/80 zoning district

Mr. Johnson explained that the code permits one horse on a 2.75 acre parcel and requires half again as much for each additional horse.

Gary and Kelly Newkirk appeared to represent their application. Mr. Zeidan led the swearing in of the applicants.

Mr. Johnson said it is his understanding that they want to have more than one horse. Mr. Newkirk said originally they had one horse and then they were given two ponies, a mother and daughter, as a package deal. Mr. McPeck asked how big the ponies are. Mr. Newkirk replied that they are 12 and 13 hands. They are full grown now; one is four and one is ten or eleven.

Mr. Zeidan said he did visit the site and asked how much of the area is open. Ms. Newkirk said they own behind the stone wall. It is their intention to put a fence along the stone wall and include most of the back yard. Mr. Zeidan asked how big is the open area. Ms. Newkirk was not able to answer that question. She did indicate on the map where the open area was. Mr. Komorsky asked about the metal fencing. Ms. Newkirk said that is a temporary fence and they plan to put up permanent fencing. Mr. Komorsky asked if the metal fence would come down and the horses would be moved further into the open area. Ms. Newkirk said yes. She said it was their intention to move the metal fencing off to the side and use it as a training area.

Ms. Swanson said she had been out there that day and looked at the back yard. She saw what appeared to be a foundation that looked to be much closer to the house. Mr. Newkirk said it will be a run-in shed to provide shelter. Ms. Swanson asked for clarification as to whether they hope to have a total of 2 horses or 3 horses. Ms. Newkirk said 3 horses. Ms. Newkirk said they have a mare and her foal that are the ponies and they also have a gelding.

Mr. Johnson said that from the map it appears that there are a number of parcels surrounding theirs that are pretty big, 5 or 10 acres. Had some of these lots had horses? Ms. Newkirk said their property previously had 2 horses. Mr. Johnson asked if they could board some of their horses on some of the other land. Mr. Newkirk said they had talked to the De Ramons but they were in the process of fixing their fencing and their property is not suitable for more horses at this time.

Mr. McPeck asked if they had had any complaints from the neighbors about just the one horse. Mr. Newkirk said, no. They had just had the complaint from next door. Ms. Newkirk said the ponies had been on their property until about two weeks ago when they were taken off site to be trained.

Ms. Swanson asked which neighbors have horses now. Ms. Newkirk said the De Ramons who are directly behind them, have horses. They are the only immediate neighbors now who have horses. Mr. Newkirk said other neighbors have had horses. The previous owners of their property had two horses and there were horses on the other side of the Ainsworth property. Ms. Newkirk referred to their deed and said the area was set up for horses. Ms. Swanson asked if there had been any change in the covenants and Ms. Newkirk said when they bought the property a title search was done and there was nothing else filed to make an amendment. They purchased the property in July of last year. They owned one horse at that time. Ms. Swanson asked how they came to own the ponies. Mr. Newkirk said their children are involved in 4H Club and the leader told them about what they thought was one pony but turned out to be two ponies who could not be separated because it was a mother and daughter who had never been separated. This happened at the end of January this year.

Mr. McPeck asked if they knew they would need a variance before they said yes to getting the two ponies. Mr. Newkirk said no they had not known as they went by what their deed said. At that point they had the gelding.

Mr. Johnson said the board had received a number of letters, both supporting and opposing the application. He read from a variety of letters. The people at 22 High Point Drive are not in favor of granting the application. They point out that the area is not a farming community, it is a small development of homes. They said horses generate manure and they are not appropriate for the area. Mr. De Ramon has no objection. The residents at 14 High Point Drive object to the possible approval of a variance based on health concerns and general nature of animals. The residents at 18 High Point Drive are opposed to the variance as they are worried about possible pollution of wells caused by a high density of animals and general odor that they feel might impact their house. Mrs. Dinsmore, 16 High Point Drive is against the variance as she worries about the odor. Mrs. Ainsworth, 10 High Point Drive is opposed to granting the variance. She complained about other animals on the property which disturb her and she worries about the odor from the horses. In support of the area variance there are 14 signatures from a variety of people on High Point Drive and Pine Ridge supporting the application. Mr. Johnson summed up that there seemed to be positive and negative reactions from the

neighbors, with concerns about health, water, odor. Mr. Newkirk wanted to add that there are four neighbors who wanted to stay neutral.

Ms. Swanson said she is not that familiar with caring for horses but assumed that the zoning regulation has to do with the health of the horses being in an area large enough for them. She asked the Newkirks if they were confident that the area they had was appropriate for 3 horses. Mr. Newkirk said he was very confident. He said one of the things he does every day is pick up the manure because he does not want to step in it himself, and the horses hooves have to be picked. If they get a build up of mud and manure it needs to be scraped out daily. Also, they have children who play in the yard. Ms. Swanson asked about exercise. Mr. Newkirk said that because currently the yard is not fenced in, they are confined to an 80' round pen. However, they are in the process of getting their yard fenced in. Ms. Swanson asked if that would be sufficient for 3 horses. Ms. Newkirk said she had grown up on a small farm with 4 horses on 3 acres with not the whole yard fenced in.

Mr. Komorsky asked how the manure is disposed of. Mr. Newkirk said he takes the manure to a friend in Red Hook about once a week. During the week the manure is stored in a pile in the back or in his cart. Ms. Swanson asked what happens when it rains, does it run off? Mr. Newkirk said no, not generally although maybe some does.

Ms. Swanson also asked about the heavy equipment on the property. Mr. Newkirk said they had curtain drains for drainage. He said the area is known to keep water and they had curtain drains put in to eliminate the water from the yard. They also had excavation work done for their run in shed. Ms. Swanson asked how long the equipment would be there. Mr. Newkirk said the work has been done so it should be removed any day. Mr. Komorsky asked if the curtain drains would be inside or outside the new fencing that will be going up. Ms. Newkirk said some would be inside, some would be outside. They planned it with the excavator to keep some of the run off water from coming in and also diverting some of the side water. The way the lot sits they have run off water coming from the hill. The front yard has some curtain drains in it that connect to the back and the other ones catch the water off their hill.

Mr. Newkirk said the previous owners, the Roods, had the town come in and put some curtain drains in. Mr. Komorsky asked where the curtain drains terminate. Mr. Newkirk said along the property line. Mr. Komorsky asked does the water just dump out on top of the soil. Mr. Newkirk said the one that was approved by the town is connected into the town's previous curtain drain. The other one goes into the back on their property but close to the neighbor. This work was checked out by the town and there were no problems with it.

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

Mr. Zeidan led the swearing in of Anne Ainsworth, 10 High Point Drive. Ms. Ainsworth said she lives next door to the Newkirks, on the right side. She has lived there for 31

years and has never been to the zoning office but recently she has been there five times. First of all they had chickens and turkeys penned against her property. Then they had the three horses which have horrendous odor. She has bronchitis and she can't even go out on her deck because the odor is so bad. She has 5.8 acres of property but has no horses. Ms. Ainsworth wanted to know who the 14 people on High Point Drive were who signed the petition as there are not 14 houses on the road.

Mr. Johnson showed Ms. Ainsworth the list of people who signed the petition. It was determined that some of the signers were from Pine Ridge Road. Ms. Ainsworth said this situation would not affect people on Pine Ridge.

Mr. Zeidan led the swearing in of Mary Carol Tardio. Ms. Tardio read a letter to the board expressing concern about the health issues - see Addendum A.

Ms. Swanson asked if Ms. Tardio was a current resident of Pine Ridge. Ms. Tardio said she had previously moved out. Ms. Tardio asked how would anyone know if the proposed drainage system is in fact going to occur and if it will be effective.

Mr. Zeidan led the swearing in of Christen Prete of 14 High Point Drive, to the left of the Newkirks' property. Ms. Prete said she was concerned about the smell and cannot sit on her porch without smelling the odor. She is also concerned for the health of her three children, specifically the run off of manure affecting their water supply and the attraction of horse flies. One of her children is very sensitive to any type of bite or sting. She agrees with Ms. Ainsworth that the residents of Pine Ridge do not experience the same effects as those who live next door. She understands they can have one horse, she just doesn't want any more than that.

Mr. Johnson made a motion to close the public hearing. Mr. Zeidan seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Ms. Newkirk explained that one of the property owners who signed the petition lives across the street. The De Ramons and Sandisons adjoin their property and they signed the petition. The reason the Pine Ridge people signed the petition is because this is a community and the deed is based on the community and she feels it was appropriate to include the whole neighborhood.

Mr. McPeck asked if they had looked into boarding the horses. Ms. Newkirk said they had looked into it but it was expensive.

Ms. Ainsworth said the De Ramons and the Sandisons live on Noxon Road and their property abuts her property but she does not believe it abuts the Newkirk property.

Mr. Johnson referred to the document Record of Findings and suggested that the board discuss the issues and come to a conclusion.

Mr. Komorsky asked how far away the homes of the people on Noxon Road were. He took a look at the aerial photo provided with the application package. Mr. Newkirk explained that the De Ramons live in back of the Pretes, Ms. Ainsworth and themselves and the De Ramons have horses.

Mr. Johnson summed up that the houses on High Point Drive are in the front of the lots and are quite close together. The lots in the back are substantially larger and the houses are a substantial distance from where the horses would be located.

Mr. McPeck felt that they should not grant the variance because the area is residential and he has looked at the property and it stands out. There are homes on the road with nice manicured lawns right next door and you see pretty much dirt from the front yard to the back on the Newkirk lot. He feels it is not in the character of the neighborhood and is detrimental to the other home owners. He understands they have a right to have one horse but to increase to three is very substantial and they have created this difficulty for themselves. They were unaware they needed a variance but this is not an excuse to grant a variance.

Mr. Johnson asked if there were any other comments on the effect on the character of the neighborhood. Ms. Swanson said she agrees with the previous statement.

Mr. Johnson said one of the things they need to consider is alternative methods for achieving benefit. Mr. Johnson said there are a number of places that board horses and that is an alternative although the applicant has indicated that this would be difficult. Mr. McPeck said another consideration would be the health of the surrounding people and the health of the animals. He feels to confine the horses to a 60' x 60' area would be a cause for concern for their health. It was his recommendation that the variance be denied.

Mr. Johnson said in terms for substantiality of variance, if they are allowed one more horse that would be around 25 – 30% so that is becoming a fairly substantial area variance.

The effect or impact on physical or environmental conditions in the neighborhood has been addressed by the neighbors who have indicated concerns with odor, health concerns from having the animals there, possible water pollution and the question about the health of the animals themselves was raised as to whether there is enough room for them to be maintained correctly.

Self creation of difficulty – Mr. Johnson said this is clearly self created because the two other horses were only obtained this winter.

Under other considerations the board might have, Mr. Johnson said this is not a unique situation but would be common to anyone with only 2 ¾ acres wanting to have more than one horse.

Mr. Bisceglia said he is concerned that there are children and elderly people directly impacted by this and the variance should not be granted because they are exceeding the lot size. It would also be a detriment to the animals.

Mr. Johnson said, given the findings they have agreed on, he made a motion to deny the Newkirks' request to have two or more horses on their 3.21 acre lot for the various reasons discussed based on the various concerns of the neighbors and the fact that this is not a particularly unique application. Mr. Zeidan seconded and the motion carried unanimously. VARIANCE DENIED

There being no other business before the board, Mr. Johnson made a motion to adjourn the meeting at 8:13 p.m. Mr. McPeck seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley
Zoning Board of Appeals Secretary