

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

Mr. Johnson asked the applicants to describe the gazebo. Mr. Robinson said it will have an octagon style roof with 4 x 4 posts and no walls, but will possibly be screened in. The finished height at the top is around 9'.

Mr. Johnson asked if there was anyone in the audience who wished to speak for or against the application. There being no comments, Mr. Johnson made a motion to close the public hearing. Mr. McPeck seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

In terms of the findings, Mr. Johnson said with regard to the character of the neighborhood and detriment to nearby properties, the proposed extension of the house is relatively small compared to the overall size. The neighborhood is composed of detached houses which were built before the current zoning and they are relatively close together. The addition seems like it will be an improvement to the house and will improve the neighborhood and does not appear to be detrimental to nearby properties. Although it is fairly close the line, there is access to the back of the yard on the other side of the road. The existing spa is about 10 feet off the line which is well within the variances that have been given for other pools. The gazebo is a low impact use which is approximately 10' from the property line, in line with other variances that have been given in neighborhoods with small yards.

Given the small lot size there does not appear to be any alternative method of placing the spa and the gazebo which should be of benefit for the applicants. Concerning the kitchen, it should be noted that it is a relatively small house and it is a minor addition to the house which should improve the livability and the value of the house.

The variances, especially the kitchen addition are fairly substantial, however the house itself is not conforming so the variance is not major compared to the existing nonconformance.

There does not appear to be a major effect on the physical or environmental conditions on the neighborhood to the extent that it improves the house and the neighborhood.

The difficulty is self created in the sense that the applicants bought the house knowing its situation, however the benefit to the applicants would appear to outweigh any self created difficulty.

Given those findings, Mr. Johnson moved that they grant the Robinsons relief from Section 240-26 G.(1) in order to construct a kitchen expansion which will have a setback of 3'6" from the property line; to legalize an existing spa which has a setback of 10' from the property line and to allow construction of a gazebo that will have a setback of 9'6" from the property line. Mr. McPeck seconded and the motion carried unanimously. VARIANCE GRANTED

09-09-02 USE VARIANCE: ADAM WESNER, 22 FELLER ROAD,
POUGHKEEPSIE, NEW YORK. Grid No. 6360-01-167575

Seeking a use variance to have a 2-family residence in an R-40/60/80 zoning district in violation of Chapter 240-27 Schedule of Permitted Uses

Adam Wesner and Harold L. Mangold, Esq. of the firm of McCabe & Mack were present.

Mr. Mangold said he represented Adam Wesner who had made application for a use variance on a building and he said he would be asking Mr. Wesner questions concerning photographs that had been taken. Copies of these photographs were then presented to the board.

Mr. Johnson asked the applicants to swear that any statements made before the board would be the truth. Mr. Wesner and Mr. Mangold replied in the affirmative.

Mr. Johnson asked for the history of the building. Mr. Wesner said he purchased the property in May 2004 for the price of \$234,000 from Mr. Amorosi. At that time there were about 8 people living on the property. Mr. Amorosi had 3 sons and a daughter. The son and his girlfriend lived in the attic. On the main floor were the husband and wife and in the basement were a husband, wife and child. The other daughter did not live there. Mr. Wesner added that in the backyard is a barn of about 3,000 square feet. Mr. Amorosi ran a business out of the barn called Auto Hut for about 20 years. From what he heard, he was doing repairs for people in the area, and he said it was very profitable.

Mr. Johnson asked how the lot is served by septic and water. Mr. Wesner said he has an individual well and septic. The Town has recently provided municipal water and sewer to the area but he has not hooked up.

Mr. Johnson asked Mr. Wesner to describe the basement. Mr. Wesner said when he took over the property it was more or less a finished basement. There was a half bath, and 2 bedrooms set up on either side of the basement. They were not sheet rocked but they had fibre board and there was a small kitchen area with stove and refrigerator and a bar area that they used as the kitchen. Mr. Johnson asked if any building permits had been issued for any of this construction that was done previously. Mr. Wesner said not that he was aware of.

Mr. Johnson asked Mr. Wesner to describe the construction that he had done. He said the gentleman's name was Ray Hafeman, he was a local contractor in the area and he had been recommended by a friend of Mr. Wesner's. He had a good reputation in the area. He was a real estate investor, a private contractor, a builder and very well known in the area. As Mr. Wesner understood it, he knew his way in and out of building different things so Mr. Wesner asked the cost of doing the basement area and he said it would be between \$10,000 and \$12,000. What he did was sheet rock the walls, put in a full bath downstairs and tiled over the bar area to make it look more like a kitchen. He also fixed

the wiring. Mr. Wesner received a building permit for the outside stairs and a stairwell and he did put in a full size window because Mr. Hafeman told him he needed to do that. Mr. Komorsky asked if there were any other entrances to the outside. Mr. Wesner said upstairs there is an entrance and exit going off the basement. Mr. McPeck asked if the building permit was only for the stairs. Mr. Wesner said it was for the stairs, the window and the stairwell. Mr. McPeck asked if it was also for the full bath. Mr. Wesner said no. Mr. Mangold said Mr. Hafeman had told Mr. Wesner that a building permit was not required for internal work. Mr. Mangold said when he got the building permit he was not too sure if the bathroom was included. Mr. Komorsky asked if there was a full kitchen with appliances. Mr. Mangold said there is now. Previously there had been a rec- room style kitchen with a bar and they converted that to a kitchen with a bar rather than a table.

Mr. Mangold said he was present when the Building Inspector, Code Enforcement Officer and Deputy Fire Inspector inspected the entire premises. He said everything that was done by Mr. Hafeman was done according to code, the only thing was it was being used as an accessory apartment and they are here for approval of that. Mr. Mangold said the application is not only for a use variance, but also for a waiver that he would go into later.

Mr. McPeck asked if, after the work was done, did he get a C.O. for the whole building? Mr. Mangold said no. Mr. Mangold said when Mr. Wesner purchased the property the town sent a letter stating that the building pre-dated certificates of occupancy.

Mr. Mangold asked Mr. Wesner to inform the board about the circumstances around his leaving the house. Mr. Wesner said he purchased the property in 2004 because he was working in Carmel at Watson Pharmaceutical. It is only about a 30 minute commute. After about 2 years the company downsized and he lost his job. He subsequently found a job in Manhattan and moved to Hughsonville because it was more convenient to commute from there. He moved into a studio owned by his brother there, to keep his expenses down. He did not want to lose the house since he had just bought it. He said the mortgage is \$300,000.

Mr. Johnson said one of the issues that the Building Inspector said was in violation was a secondary access. Mr. Mangold said at the inspection on April 9, 2009 he noted that and that a secondary access was an emergency access in the second bedroom. That has now been installed in the building. There is a bay area with push out windows in case of fire. Mr. Mangold referred to picture #12 with the push out window.

Mr. Johnson said since this is a use variance, it is not a Type II Action so they needed to go through the SEQR process. He said the applicant is asking to put more than what the town might consider to be more than the usual number of people in a house so that there could potentially be issues with the water and septic. Otherwise there is no indication of any other expansion of the existing house so it is hard to see that there is any environmental impact aside from the potential for water and sewer.

Mr. Johnson said he should have stated initially that since this is a use variance, the ZBA is the agency that would provide the variance so they should have lead agency status and he made a motion to that effect. Mr. McPeck seconded and the motion carried unanimously. LEAD AGENCY

Mr. Johnson continued that, aside from the water and sewer there is no other impact so that if they can discuss those issues in terms of the variance, they would have satisfied the requirements for deciding there are no environmental impacts which won't be considered in their discussion. Mr. Johnson therefore made a motion to deem this an unlisted action. (He did note that a short form EAF had been received as part of the application) Ms. Swanson seconded and the motion carried unanimously. SEQR DETERMINATION.- NEGATIVE DECLARATION

Mr. Johnson said they had received a referral from Dutchess County Department of Planning and Development indicating that this is a matter of local concern.

Mr. Johnson said there are a number of tests that have to be considered, each of which has to be sustained before the board can legally grant a use variance, the first being the economic return. The board needs to consider whether the applicant cannot realize a reasonable return without the variance.

Edwin J. McNiff, stated he was principal owner of McNiff Realty at 828 Main Street, Poughkeepsie, New York and swore to tell the truth, the whole truth and nothing but the truth to the best of his knowledge.

Mr. McNiff said he was asked to take a look at this property. He said this is a very unusual area. It is zoned residential yet there is mobile home zoning two doors down, and there is commercial zoning within a couple of hundred feet. There are five lots on the street, three of which are residential. He tried to come up with valuations of what the house is worth by looking at the condition of the structure and the return on the investment of the structure. The property was purchased for \$230,000. It was then re-mortgaged to do renovations which raised the mortgage to about \$300,000. It has one electrical heating system which means that the owner has to pay all the expenses on the project, which come to a little over \$3,000 per month. There is a mortgage payment of \$2,300 a month, \$500 for electricity. Mr. Johnson asked if they had bills to substantiate these bills. Mr. McNiff and Mr. Mangold said they would be provided. The fuel bill is approximately \$235 per month and \$75 for general maintenance. The income for the building is short of that amount by about \$150 to \$200 a month. The reason why the seller was looking at this was because he was trying to save his house, get a job and he thought he was doing everything right but he did not get a building permit and check to see what the status was. Mr. Wesner can't get a short sale (where the bank would accept less than what is owed on the property) because he is current on his payments and the bank won't consider relief unless he is past due on his mortgage which would affect his credit and his job.

Mr. Johnson said he had looked at the Dutchess County web site which showed that the property was assessed at \$261,000 and the town has a 100% valuation. It would seem, therefore, that the mortgage is considerably more than the assessed value.

Mr. McNiff said that in trying to come up with a valuation he looked at properties that were for sale, those that have sold and those that have received purchase offers. Based on those properties, the estimated value of the property would be somewhere between \$175,000 and \$225,000. This was based on sales of properties on Mandalay Drive, Hillview Circle for \$220,000, 914 Freedom Plains Road for \$185,000, Overlook Road, Simone Drive for \$230,000. Given the fact that the sales market normally follows the real estate asking market by a few months he went to see what was on the market place to get a maximum dollar figure to work on so he used properties located on Glenwood Road, Vincent Road, Sunset Hill. These properties were all in the market of \$217,000 to \$240,000 right now. What has sold but not yet closed on Schyler Drive is a 3-bedroom house for \$225,000 that is in contract now. Glen Court has a house for \$227,000 and 14 Mandalay for \$234,000. So that establishes a base for where they were and where they are now and what people are asking for a price. Because of the location of this property versus Mandalay Drive, etc. you have to take into consideration the surrounding neighborhood, in this case the mixed use that is there which could harm or delay the sales process. He assumed that someone would buy at a \$200,000 price and after he had taken out the real estate fees, the attorney fees, closing costs etc. the applicant would end up with \$185,000 to \$190,000 to pay off the bank loan which leaves a negative short fall.

Mr. McNiff said he knew Mr. Hafeman who was a builder who felt that building permits were required for exterior work but not required for interior work.

Mr. McNiff believed what the applicant needed was a waiver in order to utilize the property until the market comes back up so that there won't be a foreclosure on the property. He felt that this was a situation that was semi self imposed because Mr. Wesner did not do enough investigation when he bought the property with a family living downstairs and he thought accessory apartments were an allowed use.

Mr. McPeck asked what a single family residence of this size would be renting for right now. Mr. McNiff replied that it would rent for about \$1,500 or \$1,600. Mr. McPeck asked if the house was on the market now. Mr. McNiff said no it was not, because the market is slow.

Mr. Komorsky asked what was the status of the barn in the back. Mr. McNiff said that is used for parking by the tenants and there is no additional fee for the parking.

Mr. McPeck asked Mr. Wesner if he bought the house in 2004, when did he start the renovations? Mr. Wesner said about six months later. Mr. McPeck said he made a full kitchen downstairs and he had a full kitchen upstairs. Mr. Wesner said there was a kitchen downstairs, he just made improvements to it. Mr. McPeck asked if any violations were noted when he bought the property. Mr. Wesner said no. Mr. McPeck said isn't

that a little unusual? Mr. Mangold said they bought from one family who used three floors and they had a business in the back so it looked like this was all approved. The prior owner took Auto Hut out and he moved his family out. It left a large room in the attic which is going unused and it left a kitchen downstairs with a half bath. Mr. McNiff said, in addition to that, if the building was built prior to 1976 the town issues a letter that there is no certificate of occupancy and no outstanding code violations that they are aware of.

Mr. McPeck asked Mr. Wesner if he did all these renovations and he was planning on living there by himself, why did he need two kitchens? Mr. Wesner said he was going to live in the basement and rent out the upstairs to defray the costs.

Mr. Mangold asked Mr. McNiff to describe the character of the neighborhood. Mr. McNiff said it is a mixed neighborhood. It is a small, well maintained neighborhood. There is always the stigma when there are 30 plus mobile home units in the area although it is a well run park and the units are nice though old. These units have sold in the \$30,000 to \$35,000 range.

Mr. Johnson asked if Mr. Wesner had family living in the area. Mr. Wesner said he did and they have their own houses. Mr. Johnson said, in that case he wasn't planning on having family members moving in with him? Mr. Wesner said no. Mr. Mangold said that was the variance they were asking for. Mr. Mangold said as far as the mobile home units are concerned, the price is just for the mobile home, not for the pad. Mr. Mangold referred to the pictures provided and said you could see by the red barn a fence and a mobile home abutting the property line. In the second or third picture could be seen a fence put up by a neighbor and the photos showed the mobile home park. Mr. Mangold said it is a difficult area to price, and at the time Mr. Wesner bought the property it was priced high and now he is in a bind.

Mr. Mangold continued, was the hardship unique to the neighborhood? Mr. Mangold said the zoning allows for single family, accessory apartments and detached apartments. It does not allow for multi-family or town houses or 2-family houses. Mr. Johnson asked Mr. Mangold to describe what an accessory apartment is. Mr. Mangold said an accessory apartment is one where the owner lives in an apartment and the apartment is not more than 1/3 the total square footage and that the person who lives in the accessory apartment is a family member and there are other requirements concerning sewer, water and parking. Mr. Mangold said this is an accessory apartment and they are not asking for this to be a 2-family house. It doesn't have the types of entrances and exits for a 2-family and it is not a duplex. The house conforms to the character of the neighborhood, being a multi use. Mr. Mangold said there are only 5 single family dwellings in that neighborhood surrounded by 20 or 30 mobile homes. It is a nice little neighborhood but that is different in character. People come to look at the house but they may be a little afraid because there are a couple of motor cycles parked out there and they may not want to buy the house. Mr. Mangold said as far as the question was it self-created, the prior owner had a son in the attic, a son and daughter in law and children in the basement and he lived in the middle of the house and that seemed to be an allowed use. There was also

an autobody repair shop in the barn. Mr. Wesner made presumptions that were not totally correct at that time. As a result of the inspections made by the town he has done everything there required so that it complies with an accessory use. There might still be some firematic requirements around the furnace that have not been addressed. In this regard this is a use variance with a waiver of the owner residing there and a family member residing there. The building has been there since 1951 and no additions have been made, so the waiver is not for the building itself. Mr. Mangold said Mr. Wesner is asking the board to consider a use variance with relation to the part that covers the square footage and a waiver of the ownership that the owner resides there, and that a family member of the owner reside there.

Mr. Komorsky asked how many people are presently living in the house. Mr. Wesner said there are a couple upstairs with 3 children, and 3 people downstairs.

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

Daniel Francese of 308 Noxon Road said his property abuts Mr. Wesner's property. He has owned his house for about 18 years. He said he did not remember Richard or Linda Amorosi ever having 9 people in the house. They were all immediate family members. He does not want to live next door to a 2-family house. There have been some problems as far as the barn being used for the tenants only. He has photos of a 50+ tractor trailer on the property unloading dozens of spas, and he has rented to other businesses including someone doing auto work there who poured oil into the ground. He said it is a very nice neighborhood, it is nice and quiet and he does not want a house with that many people there. He does not feel that, even with the improvements, that the downstairs would be safe because it is a completely subterranean basement. Mr. Francese's house has an identical layout and was built at the same time, by Mr. Feller. There is quite a bit of noise and traffic coming from the house and he is totally against it.

Jill Francese, 308 Noxon Road added that the tenants do not use the back for parking, they use the driveway that abuts their property and this makes a lot of noise. They are also aware of the tenants that have been living there illegally, letting the Franceses know that there has been flooding and mold damage to the basement causing health problems for their children. Also, she is against having a 2-family residence there and that is what he is using it for. Also the commercial use that he has had there has been nothing but a nightmare for them.

Mr. Francese said that since 2004, 2005 he has been consistently calling and providing copies of pictures of trucks unloading things for the barn. Mr. Francese added that a tenant moved out of the basement just a few weeks ago and it was re-rented immediately. Ms. Francese said there are a lot of children in the neighborhood and a lot of the issues they had have concerned the commercial trucks on this little road. Ms. Francese also commented that as far as Mr. Amorosi having a bar downstairs is a quite a stretch from a full kitchen. Ms Francese added that at the time Mr. Amorosi left, he and his wife only had their teenage son under the age of 20 living there.

Karen Heron of 298 Noxon Road said her property is adjacent to the Wesner property. She built the fences because of all the dumping that was going on. Mr. Amorosi had cut down trees and dumped other things back there, which is where the water line goes through. It prevents her using the back part of her property. The barn sits on the property line. Ms. Heron said it has been rented out for people to use for auto use. Things do get dumped into the ground. It is a water shed area, it is wetlands and there is always water back there.

Mr. Johnson asked Ms. Heron if she had seen usage in the barn. She said yes but it had not been for a while but it has been since Mr. Amorosi sold the property.

Kevin Donohue, 280 Noxon Road requested that the public hearing be adjourned as he did not see a representative from the Planning, Zoning and Building Department present to give expert testimony as to some of the issues on the property, particularly building code issues relating to egress, and that was written on September 9, 2009. He heard testimony from the applicant concerning two kitchens and, according to the Dutchess County Real Property Tax office as of 9/7/09 there is one kitchen, 1 full bath and 2 bedrooms at this location. On March 1 2006 a C.O. search was done and the records showed that it was a single family residence constructed in 1951. It identified the barn, 2 sheds and an above ground pool. When it was purchased back in 2004 it would have been the same response. If he was buying a property and what was in the field did not match what the town records showed, he would question it. Another reason he requested adjourning the public hearing was so that the Zoning Board of Appeals could retain counsel to assist with the decisions on the matter. The applicant had also stated he would return with bills and utility statements and they would help with the board making their decision.

Mr. Donohue continued that there had been testimony given about \$1,600 rental. Up until July of this year Mr. Donohue had been getting \$1,750 for his place on Noxon Road that has 1,100 square feet with 3 bedrooms and one bath.

Ms. Swanson said that Mr. McNiff had mentioned that people were reluctant to purchase because of motor cycles and seeing the mobile homes. She asked when the house had been put on the market. Mr. McNiff said the house had not been put on the market but when an appraisal is done they look at the comps and when he did the comps using the properties on Mandalay Drive and Simone Drive he had to discount location because that location was better than this location. Ms. Swanson said then, that Mr. McNiff assumed that people might have a problem buying it. Mr. McNiff said that when doing a comp you have to adjust the price to the market place, taking into consideration what was sold and what is on the market so that if someone looked at houses on Mandalay Drive or Simone Drive they might choose one of those houses because of a better location.

Mr. Johnson said he thought the public hearing had raised a number of issues so he felt it reasonable to adjourn the public hearing to allow the applicant a chance to provide the board with a better break out of the electric heating and the taxes and allow the board to

Mr. Johnson asked for confirmation that Mr. Marsh is before the Planning Board and cannot move forward until this issue is cleared up. Mr. Marsh said yes, that is so. Mr. Johnson asked if all the accessory structures will be there. Mr. Marsh said 2 small buildings will be removed and 3 large barns will remain. Two large barns were built in 1870 and one was built in 1975. Mr. Komorsky asked if the building at the end of the driveway was being taken down and Mr. Marsh said yes.

Mr. Johnson said as this is a use variance they make a SEQR determination. Mr. Johnson said the ZBA is the granting authority and he motioned that the board declare themselves lead agency. Ms. Swanson seconded and the motion carried unanimously. LEAD AGENCY

Mr. Johnson said his understanding was that this is a technicality in the town code and if the buildings were not there, there would be no problem with the zoning code. It is just a question of having buildings on a lot that will be subdivided and will not have a principal structure on it because you have to have a building lot before building a principal structure. There are no other environmental or other issues which will not be considered in terms of the subdivision process, so it is similar to a Type II action where another agency will consider any other environmental issues once the building is put up. With those considerations Mr. Johnson moved that they had considered all adverse impacts and find that there are none that will not be addressed as part of the planning procedure so that they can issue a negative declaration for this. Mr. McPeck seconded and the motion carried unanimously. SEQR DETERMINATION – NEGATIVE DECLARATION

Ms. Swanson asked what the buildings would be used for. Mr. Marsh said the existing buildings would be used for storage. One building is a scuba diving business and will remain that way. The other ones are a garage and storage of lawn mowers, tractors, etc.

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

Kevin Donohue, 280 Noxon Road said he read this application and thought it would be more interpretive than a use variance. He said they were interpreting a section of zoning that was written for properties that already had principal uses. In this case the scenario could not be written into zoning without knowing about it. In driving by the property you see the buildings and the old farmhouse there. In granting the variance you will see the buildings and the farmhouse still there. In granting the variance you will see that eventually a new house will be constructed on the lot so visually LaGrange residents will not see any change in the property. The reason he brings up interpretive is that if the board made an interpretation of the section of zoning that would allow the subdivision of properties with accessory structures on them, to which a principal structure would soon be built then it assists the Planning, Zoning and Building departments in making future decisions on subdivisions of the same nature. He felt the ZBA has interpretive power that they can invoke to give a solution to a scenario, it is part of a precedent that they have already established opposed to a use variance that is very specific and the four point test

is very difficult. In this case he does not see it as a use variance because there is no physical change on the property that will change because of granting or denying the variance.

Mr. Johnson agreed that it was an interesting way of approaching the problem.

Mr. Johnson said that in the future it might be helpful to have town counsel consider that there might be a different way of tackling this whole thing. Given that the town had advertised for a use variance and that the town's legal counsel had indicated that a use variance would be appropriate, he felt that they could go ahead with this application.

Mr. Johnson said in terms of a reasonable return the applicant desired to subdivide the lot so he could build next to his parent's home. To fully coordinate with the town code he would have to destroy buildings which are otherwise in good order and have an economic value as well as a historical value on the property and having to reconstruct these buildings would be a major cost if he wanted to continue their usage.

The alleged hardship relating to the property is unique in the sense that it is an existing property which has a number of large and old buildings on it. The desire to build a new house is being hindered by the fact that the town code makes it illegal to subdivide with existing structures. In this particular case one of the structures is an old barn and the other was constructed before the current zoning. Both structures are quite large. The applicant is going to remove two other smaller nonconforming structures. The application is unique in the sense of representing an older farmstead which is being developed to allow the family to continue to live in the same area so that is a continuation of the general usage of the neighborhood.

The alteration to the neighborhood will be the addition of one house. The neighborhood is sparsely populated. There are a number of large barns that are close to the road so there will not be any major visual impairment in the neighborhood. The new building will not substantially increase the traffic or the number of people living in the neighborhood or any other noise or light issues.

The alleged hardship is not self-created in that the land has been owned for a number of years, well before the current zoning and the desire to build a new house next to one's parent is notable.

Ms. Swanson wondered whether they should add anything about the fact that when they donated the surrounding property to Sprout Creek Farm a condition was that it would remain farmland and they cannot build any other houses or further subdivide. Mr. Marsh said this was part of the original plan but there was a plan to have an additional residence for the Marsh family. Mr. Johnson said that was another indication that this was a particularly unique property.

With that modification, Mr. Johnson made a motion that based on the findings they should grant a use variance to Richard Marsh to allow him to subdivide existing property

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LAGRANGE ZONING BOARD OF APPEALS

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which will have three accessory structures on the property, so that he can subdivide the land in order to build a conforming house on the newly subdivided land. Mr. McPeck seconded and the motion carried unanimously. USE VARIANCE GRANTED

There being no other business before the board, Mr. Johnson made a motion to adjourn the meeting at 8:58 p.m. Mr. McPeck seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley
Zoning Board of Appeals Secretary