

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, January 3, 2011 at LaGrange Town Hall, 120 Stringham Road at 7:30 p.m. Chairman Gary Polhemus called the meeting to order. Board members Nancy Swanson, Paul Bisceglia, Aaron McPeck, Marc Komorsky and alternate Mark Christenson were present. Rebecca Valk, Esq. of the firm of Van DeWater & Van DeWater was also present.

Ms. Swanson made a motion to accept the minutes of December 6, 2010 as corrected. Mr. Bisceglia seconded and the motion carried unanimously. MINUTES ACCEPTED.

OLD BUSINESS

06-10-01 AREA VARIANCE: ORANGE COUNTY – POUGHKEEPSIE LIMITED PARTNERSHIP dba VERIZON WIRELESS, ROSSWAY ROAD, PLEASANT VALLEY, NEW YORK (OWNER: MARIA IOZZO) Grid No. 6562-03-370380 Seeking relief from Chapter 240-28 Schedule B, Chapter 240-49 G.(2), (5) in order to locate a wireless monopole with a proposed height of 136', and a setback of 231' from side yard and 341' from rear (tower) and 300' (accessory structure)

Mr. Polhemus announced that this application is adjourned. It is still before the Planning Board.

09-10-01 JOHN BARGER AREA VARIANCE, POND GUT ROAD, PLEASANT VALLEY, NEW YORK Grid No. 6562-02-819904 Seeking relief from Chapter 240-26 E. in order to carry out a 3-lot subdivision in which all three lots would be encumbered by wetlands and/or steep slopes. Also seeking an interpretation of the code concerning width of lot at any point.

John Barger, owner and Mark Olson, RA, surveyor were sworn in by Mr. Bisceglia.

Mr. Polhemus said a lot of work had been done by the town and town attorney on this project and a Resolution has been drawn up. Mr. Polhemus described the project. This is a proposed 3-lot subdivision on Pond Gut Road and the applicant has asked for a determination on the minimum width of lot because there were some conflicting sections in the code. Chapter 240-26 G. states that at no point shall the lot be narrower than 50 feet. Mr. Polhemus said that particular wording was left over from prior to the code change and it has been determined not to rule in this situation. Ms. Valk referred to Chapter 240-28 Schedule B that expressly states that anything in Schedule B prevails unless it is expressly qualified somewhere else in the code so that language removes the ambiguity and there determines that Schedule B prevails.

Mr. Polhemus referred to another conflict in the code which states "a minimum width of lot at any point" of 150' and a "minimum lot frontage on Town right-of-way line" of 100'. This second issue presents a conflict between two provisions of the Zoning Code which are both contained within Schedule B, and in this case the ambiguity in the language must be resolved in favor of the property owner. Thus, the applicant need only provide a minimum lot frontage and lot width of 100'.

Seeking relief of 21' from the required minimum setback of 55' from the right of way of a town road in order to construct a 33' x 8' front porch addition to a nonconforming single family residence with a setback of 34.9' from the r.o.w. of Orchard Road.

Mr. Polhemus explained that because his property is within 500' of a state road, the application had to be referred to Dutchess County Department of Planning & Development. A response had been received back from the county stating that this was a matter of local concern.

Mr. Polhemus said at the December meeting the public hearing had been adjourned. He asked if there was anyone in the audience tonight who wished to speak for or against the application. There being no comments, Mr. Polhemus made a motion to close the public hearing. Mr. Bisceglia seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Mr. McPeck made a motion to grant Mr. Davidson's request for relief of 21' from the required minimum setback of 55' from the right of way of Orchard Road in order to construct a front porch with a setback of 34.9 feet. Mr. Bisceglia seconded and the motion carried unanimously. AREA VARIANCE GRANTED

12-10-02 AREA VARIANCE: PINE HILL ESTATES II, CRAMER ROAD AND OLD OVERLOOK ROAD, POUGHKEEPSIE Grid No. 6361-02-663537 and 6361-02-630549

Seeking relief from Chapter 240-28 Schedule B which requires a minimum lot frontage on a town right of way line of 75' in order to carry out a 2-lot subdivision where Lot #1 will have a frontage of 54.9' and Lot #2 will have a frontage of 50'.

Mr. John Andrews, P.E. of the firm of Rohde, Soyka & Andrews and owner Pat Reilly were present.

Mr. Polhemus said this application had been adjourned at the last meeting in order for the board to carry out a site visit. Two board members, Paul Bisceglia and Nancy Swanson attended with Mr. Andrews.

Mr. Andrews said the variance application was also deferred awaiting a SEQR determination by the Planning Board. On December 21, 2010 the Planning Board granted a negative declaration pursuant to SEQR, which means the zoning board is free to take action.

Ms. Swanson said she had looked at the county Parcel Access and tried to figure out what was purchased and when. She asked if the 8-acre lot they are dealing with was one lot at one time. Mr. Andrews said they have two lots. There is the 7.9 acre lot and the smaller .08 acre lot. There always have been these 2 lots. Ms. Swanson asked if they were part of the 66 acre purchase in 2004. Mr. Andrews said the only one that was part of that was the 8 acre lot. The other lot was purchased in 2005. Ms. Swanson said the county web site gives a sale date of the 8 acre parcel of March 25, 2010.

At this time Mr. Reilly was sworn in. Mr. Reilly explained that in 2004 he was part of an LLC that purchased the whole farm of which the 8 acre piece was part. Ms. Swanson asked if

that was a separate lot at time. Mr. Reilly explained that it was always a separate lot. Mr. Andrews said the property was isolated from the rest of the farm by the Con Ed right of way. Mr. Reilly continued that in 2005 the LLC purchased the small lot that fronts on Cramer Road from the Arlington School District. Last year he purchased from the LLC both of those pieces.

Ms. Swanson asked for clarification on the status of Old Overlook Road. Mr. Andrews said it is no longer a county road, but was conveyed to the town when the county abandoned it.

Ms. Swanson referred to a statement made at an earlier meeting that prior to the recent change in zoning the requirement was 50' of road frontage. Ms. Swanson said she has an old zoning code that refers to 75' of frontage in the R-80 zoning district. Mr. Andrews said that parcel had been in the R-40 zoning but when the changes were made this property fell into the R-40/60/80 zoning, and because there is no central water or sewer the R-80 zoning applies.

Mr. Bisceglia said when he went on the site visit he wanted to see the difference between the two roadways, Cramer and Old Overlook. He said Old Overlook Road is much less traveled and based on the frontages, he would be in favor of keeping the 11' on the Cramer Road frontage so there would be less of a variance on the Cramer Road frontage. Mr. Andrews said the lot frontage on Cramer Road is actually 61'. They had split it to get both lots a little closer so they had given 11' to the Old Overlook lot making that frontage 54.9 and the Cramer Road lot 50'. He continued that what Mr. Bisceglia is referring to is altering the line so that the 61' stays with Lot #2 (Cramer Road) which would make the frontage on Lot #1 (Old Overlook Road) down to 43.9'. Mr. Andrews said they would be happy to do that and they did not think the Planning Board would have an issue with that as everything would stay the same.

Mr. Bisceglia also said it would be nice if the tree line that exists between the existing houses and the proposed lots could be maintained. There are deciduous trees as well as a lot of Christmas trees. He thought that tree line would be an advantage, not only for the existing owners but the new owners of the lots as well. Mr. Andrews said they walked all the way to the top with Ms. Swanson and it was as Mr. Bisceglia said, large deciduous trees and they have no intent of taking any of those trees down and would leave the property line as natural as possible. Their goal is to leave as many Christmas trees as well. He indicated one of the lots as being a bit more problematic because of the septic system but they will leave as many trees as possible. He felt Ms. Swanson had a pretty good feel as to what trees could be saved.

Mr. Bisceglia referred to Lot #1 and asked if there was any way of pulling the driveway away from the existing properties. Mr. Andrews said they did consider that but if the driveway is pulled away it gets into an area of a pocket of trees that he indicated on the map. He tried to minimize the earthwork as much as possible, and they are also quite a way from the property line. Mr. Bisceglia said he felt there was quite a lot of public concern about the sensitivity of the placement of anything there and he felt extra care should be taken in doing so. Mr. Andrews said he understood that but for them to do the best job of saving what is out there, not only does it make the new lots better, but it protects the existing lots as well.

Ms. Swanson asked what the stars meant that were shown on the site plan. Mr. Andrews said they were individual deciduous trees that showed up on the aerial photo.

Ms. Valk said that procedurally she needed to note that if a majority of the board agreed with Mr. Bisceglia's recommendation about rearranging the frontages, there would have to be re-advertising for the one lot because the area variance would be increased from what was advertised originally. Mr. Andrews said the changes would be from 54.9' and 50' to 61' on Lot #2 and 43.9' on Lot #1. Ms. Valk said Lot #1 was advertised so that it would have a frontage of 54.9 feet. Re-arranging the layout would take it down to 43' which would increase the amount of variance required. Any time an application goes that way it must be re-advertised whereas for Lot #2 the application was for 50' of frontage and this would be increased to 61', lessening the amount of frontage required. Ms. Valk continued that if the board decided to go in that manner, then they could act on Lot # 2 that night and Lot #1 would have to be heard at the next month's meeting.

Mr. Bisceglia asked if the amount of time lost would be no more than 30 days. Mr. Andrews said as far as the zoning board is concerned it may only be 30 days but the Planning Board cannot take action on preliminary approval and going to the health department for 60 days.

Mr. Polhemus then made a motion to re-open the public hearing for public comment. Mr. McPeck seconded and the motion carried unanimously.

Ms. Millett of 20 Old Overlook Road asked for an explanation of what is being proposed. Mr. Andrews showed her on the map what the proposal is. Ms. Millett asked who maintained Old Overlook Road and said it was not being maintained very well as grass grows in the road. Ms. Valk said her comments would be passed on to Michael Kelly, the town's highway superintendent. Ms. Millett said she also had concerns about the depths of the wells and the water table.

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

Ms. Swanson had some legal questions and at this point Mr. Polhemus made a motion to go into executive session for matters of attorney/client privilege. Ms. Swanson seconded and the motion carried unanimously. The board entered into Executive Session at 8:10 p.m.

At 8:25 p.m. Mr. Polhemus made a motion to return from Executive Session. Ms. Swanson seconded and the motion carried unanimously.

Mr. Polhemus then summarized the concerns of the board to be forwarded to the Planning Board. Their concerns were about maintaining a tree buffer and could the driveway to Lot #1 be adjusted for minimal impact to the existing houses. While these concerns are not directly related to the application before them they are comments they would like the Planning Board to consider.

Mr. Polhemus said with regard to Mr. Bisceglia's recommendation concerning the road frontages, the board was comfortable with his recommendation that the frontage for Lot #1 be 43.9' and would need to be re-advertised and appear at the next meeting.

Mr. Polhemus said the board seemed to feel that 2 houses on 8 acres are not going to be a significant consideration. The Planning Board had already issued a negative declaration pursuant to SEQR. Mr. Andrews added that they are obligated to get Dutchess County Dept. of Health approval for the water supply and waste water disposal facilities for each of the lots so typically the Planning Board defers to them before they can get final approval.

Mr. Komorsky made a motion to grant a variance to Pine Hill Estates II, Lot #2 seeking relief from Chapter 240-28 Schedule B which requires a minimum lot frontage of 75' in order for Lot #2 to have a frontage of 61', being a variance of 14'. Mr. Bisceglia seconded and the motion carried unanimously. AREA VARIANCE GRANTED FOR LOT #2

The board then made their findings for Lot #2:

Character of the Neighborhood and Detriment to Nearby Properties

The detriment is minimized. Lot # 2 will be approximately 4 acres so there will be minimal density.

Alternative Methods for Achieving Benefit Sought by Applicant

There would be no alternative method for this property.

Substantiality of Variance Requested

This is a 14' variance which is more than what was required when the applicant bought the property.

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

There has been no evidence of physical impacts and given the fact that the Planning Board has issued a negative declaration pursuant to SEQR would support the findings that there are no impacts.

Self-Creation of Difficulty

The property complied with zoning at the time the lot was purchased, therefore the difficulty was not self-created.

NEW BUSINESS

1-11-01 AREA VARIANCE: STEPHEN MUCCI, 62 MICHAELS LANE,
POUGHKEEPSIE NEW YORK. Grid No. 6361-04-951144

Seeking relief from Chapter 240-28 Schedule B which requires a minimum setback of 20' from the side property line in order to construct an inground pool with a proposed setback of 10'.

Stephen and Eileen Mucci were present to represent the application. Mr. & Mrs. Mucci were sworn in by Mr. Bisceglia.

Mr. Mucci explained that he was requesting relief from the required 20' side yard setback due to limited back yard space. When they had the house built they had a verbal understanding with the builder that they would have ample back yard space for a pool. However, when the house was built it was pushed back further on the property than what

they thought would happen. Mr. Mucci showed the board photos of the back yard. He referred to the site plan and said the reason they felt this was the best location for the pool was because that is the deepest section of the yard. Safety was also a consideration because they have small children and would like to see them from inside the house as well as outside. If they put the pool in the middle of the yard it would take away from any other backyard space. They don't want the pool near the driveway where cars are pulling up. There is a basement egress door and they might plan on having access to the basement from the pool location. They might want to build a changing room for the pool. Mr. Mucci added that part of the yard has direct sunlight and he thought the L-shape in the corner of the yard would enhance the property value.

Mr. Bisceglia asked how large was the pool proposed to be. Mr. Mucci said it is 42' long parallel with the house, the L-shape is 28' and it is 18' wide at its longest and at the 28' section it will be 16' wide. Mr. Mucci added that they already have an existing fence which will give privacy to his neighbors. Mr. Polhemus asked if he had given any consideration to reducing the size of the pool. Mr. Mucci said they had already reduced the size. Originally it was going to be 42' x 20' and 18' at the 28' section so it was reduced by 2'.

Mr. Bisceglia asked why he picked that particular position with only a 10' setback. He asked where the septic and well were located. Mr. Mucci said the septic is in the front of the house. They have town water. Mr. Mucci added that it is all hill in front, there is nowhere else to put the pool. He has a 26' long deck on the back of the house that sticks out 14' so he wants to wrap the pool around the deck. He is also trying to save some play area for his children to use.

Mr. Polhemus asked if he would be willing to further reduce the size of the pool. Mr. Mucci said it would defeat the purpose because he was planning on having a diving board so that there would be a deep section and a shallow section.

Mr. Polhemus made a motion to open the public hearing for public comment. Ms. Swanson seconded and the motion carried unanimously.

Maria O'Halloran of 70 Michaels Lane spoke on behalf of herself and her husband Daniel. She said they believe in the zoning and the 20' that is required, and they would like the board to enforce that. She said the Muccis have over an acre and a half of property even though some of it is on a hill but they have a huge back yard and a pool would fit in a different position. If they don't want to put the pool in the middle of the property, then they should compromise on the size. They have a pool and they compromised on the size to meet the zoning. The reason there is more sun on that side is because they have trimmed down some trees and the Muccis could also trim trees on their side of the property. The O'Hallorans have already replaced trees so that will probably not help them. If they really want a pool this size then they could put it over by the driveway where it would be protected by a fence. They could make the deck smaller. However, if they wanted to keep the deck and have the pool by the sliding glass doors, they could eliminate the L-shape. They feel this would improve their property value but it would be infringing on the O'Hallorans property values to have their neighbors so close to the property line. She feels it is unfair and unnecessary.

There being no further comments from the public Mr. Polhemus made a motion to close the public comment period. Mr. McPeck seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Mr. Polhemus said he had met with the building inspector that day to discuss this proposal. He suggested to the board that they might ask the applicant to re-position the pool to meet the side yard setback and encroach instead on the rear yard setback. Ms. Valk said that would require re-advertising because there would be a change in the variance being sought if the pool did not meet the setback from the rear property line.

Ms. Swanson said for the record she visited the property that day. Mr. Polhemus said he was out there also.

Mr. Bisceglia said he felt that the pool was very large and it should be moved over and he did not think a variance should be granted under this situation.

Mr. Polhemus asked Ms. Valk how the applicant could move forward if he decided to change the proposal. Ms. Valk said he could amend the application to show the revised layout and the application would need to be re-advertised. Procedurally, the board would vote on the application before them, and if it is denied they could come in with a new configuration. They could not come back in and apply for the same exact layout. The administration of the town would have to make the decision as to whether it would be treated as a new application.

Mr. Bisceglia made a motion to deny the application made by Stephen Mucci of 62 Michaels Lane seeking a 10' variance from the side property line. Mr. McPeck seconded the motion.

The board then made their findings:

Character of the Neighborhood and Detriment to Nearby Properties

There are options available so that the nearby properties would not be encumbered upon.

Alternative Methods for Achieving Benefit Sought by Applicant

There are alternative methods. Possibly the pool could be shifted over to meet the side yard setback and bring it closer to the rear property line, where the property is undeveloped.

Substantiality of Variance Requested

10 feet is a substantial request.

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

The proposal does affect the immediate neighbor.

Self-Creation of Difficulty

It is self-created because the pool size can be varied.

A motion having been made and seconded, the board voted unanimously to deny the application. AREA VARIANCE DENIED

1-11-02 USE VARIANCE: ANNKIM PALMER, 35 TRAVER ROAD, PLEASANT VALLEY, NEW YORK Grid No. 6462-03-197167

Seeking a variance from the requirements of Chapter 240-52 Accessory Apartments

Owner Annkim Palmer and her husband Paul Artuz were sworn in by Mr. Bisceglia.

Ms. Palmer explained that in 1996 her parents built an apartment in her house with the intent that if one of them died the other one would live there. She has had a gentleman living there for the past five years but he is not related by blood or marriage to her. Ms. Palmer now wishes to sell her house as she has bought a house in Florida and she would like the gentleman to remain in the house when it is sold.

Mr. McPeck asked if the house was in her name in 1996. Ms. Palmer said yes, it was. Mr. McPeck asked if her parents got a building permit to build the apartment. Ms. Palmer said, no, that is what they have to get after this.

Mr. Polhemus said the apartment was not approved and from what he understands from the building inspector it does not meet code regarding egress. Ms. Palmer said they have to replace one of the windows with a larger one. There are two exits but the building inspector said one egress window has to be larger than the one they have. Mr. Polhemus said for clarification, he understands this is not something a sale is contingent upon but what they are requesting is that they be able to keep the gentleman there. Ms. Palmer said he is 73 and has a heart condition and this is his home.

Mr. McPeck asked how long has the gentleman been living there. Ms. Palmer said about 5 years. Mr. McPeck asked if Ms. Palmer thought she might be able to get a buyer with the tenant living there. Ms. Palmer said yes, as he pays the taxes.

Ms. Valk said that the first standard the applicant was asked to respond to is whether or not the denial of this variance causes an unnecessary hardship denying economic and beneficial use of the property. The law provides that has to be proved with actual dollars and cents proof meaning that the applicant needs to prove that they cannot use their property in any beneficial manner without the use variance. It is a very high standard. Ms. Valk recommended that if the town code, which limits accessory apartments to family members, is a difficulty, perhaps the better line of attack would be to ask the Town Board to consider a code amendment which is within their legislative purviews. She is about 99.9 percent sure that this variance would not satisfy the legal standard. She said that criteria is the strongest of the four to meet for this particular variance. It is a legislative determination that the Town Board has made that accessory apartments can only have family members in them and for a revision to that it may be more appropriately directed at that board for a code amendment.

Mr. Polhemus explained that Ms. Valk is recommending that the requirement that it be a blood relative/family member in the apartment be taken to the Town Board to change that. The ZBA is not able to change the code. Ms. Valk added that the ZBA can entertain the request for a use variance, but they would most likely not get it. Ms. Valk said the only course of action where they might have a chance of success would be to ask the Town Board if they would be willing to consider amending the code so that accessory apartments are not limited to family members. She would not guarantee what the Town Board would say to that but they are the board that legislates in this town and it would be more appropriate that they take this to that board.

Mr. Polhemus asked Ms. Valk if the legislation was to get changed would a use variance be required. Ms. Valk said if the Town Board decided to make the legislative decision that accessory apartments could have individuals other than family members then a variance

would not be required. As long as one of the units is owner occupied would be the requested change for the code, and the Town Board would have to consider that.

Mr. Polhemus addressed the applicants and said what they should do would be to go to the Town Board and request a change in the code.

Mr. Bisceglia asked, hypothetically what could the ZBA do if they did anything. Ms. Valk said they could consider the use variance application and it is woefully deficient in satisfying the criteria for a use variance. They could proceed to go forward and vote on it but that would be their only option to vote on the use variance application as presented.

Mr. Polhemus made a motion to open the application for public comment. Ms. Swanson seconded and the motion carried unanimously.

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

Joe Luna, 20 Vincent Road said he was getting the impression that the applicant was trying to sell her house. By going before the Town Board to seek a change in the zoning could take any where from 6 months to a year and it might not fly. There are no legal two-family houses in the Town of LaGrange presently and what they would be asking would be for the Town Board to change the code to have legal two-family houses.

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

Ms. Valk responded to Mr. Luna's comment which she said brings them back to the difficulty with this application. He summed it up perfectly – the Town of LaGrange has not had two-family houses. It is not a use that has been permitted.

Ms. Swanson said from what she knows about use variances and the financial hardship that has to be shown, she did not feel that this application should have come to this board as a use variance, and in her opinion the fee should be returned to the applicant.

Mr. McPeck said that is her opinion, but he would like to enter a motion to deny the application.

Mr. Polhemus asked Ms Valk whether the board should take a motion at this time in case the request goes to the Town Board. Ms. Valk said whether or not the applicant goes to the Town Board would not affect any action the ZBA might take that night. Ms. Valk said this is a very difficult application. This apartment has been there and used for 5 years in a manner that is not in compliance with the current town code and whether or not the Town Board wishes to amend the code to permit that use to continue is within the Town Board's purview.

Mr. Polhemus said in that case Ms. Valk is confirming they are at a point that they can take a motion to deny the application. Mr. McPeck made a motion to deny the use variance to the owners at 35 Traver Road seeking a variance from the requirements of Chapter 240-52

Accessory Apartments. Mr. Komorsky seconded and the motion carried unanimously. USE VARIANCE DENIED

Ms. Palmer asked if she could still get the Special Use Permit for the accessory apartment. Ms Valk explained that they expire for every owner so if she sold the house the new owner would have to apply for a new Special Use Permit for a family member.

There being no other business before the board, Mr. Polhemus made a motion to adjourn the meeting at 9:11 p.m. Mr. Komorsky seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley, Secretary
Zoning Board of Appeals