

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, November 2, 2009 at LaGrange Town Hall, 120 Stringham Road at 7:30 p.m. Chairman Tracy Johnson called the meeting to order. Board members Paul Bisceglia, Nancy Swanson, Aaron McPeck, Gary Polhemus and alternate Marc Komorsky were present.

Mr. Johnson made a motion to accept the minutes of October 5, 2009 as amended. Mr. McPeck seconded and the motion carried unanimously. MINUTES ACCEPTED.

OLD BUSINESS

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

Mr. Johnson said that the board had received a letter from Mr. Wesner's attorney requesting that they continue adjourning the application to the December meeting. They had also received a copy of a letter from the Office of the Building Inspector to the applicant stating that he would recommend to the board that the request be honored. However, he said, because of life safety issues the matter could not be prolonged indefinitely. The letter went on to say: "It is the understanding of this office that individuals will not occupy those areas of the building that do not have a second means of egress".

Mr. Johnson said this has been held over once before and they were hoping to bring it to a conclusion at this meeting. The attorney's letter mentioned that the applicant has lost his job and a witness that Mr. Wesner was planning to bring to the meeting was not available that night. The board agreed that they could hold over the meeting one more time. Mr. Johnson made a motion to adjourn the Wesner application to the December meeting, for one last time and that the issue will be resolved in December. Ms. Swanson said there was someone who had come last time to the hearing who was in the audience again that evening. Mr. Johnson said this is putting the public to some difficulty and that this would be the last adjournment that the board will give, unless, Ms. Swanson added, Mr. Wesner appears at the next meeting and has good reason for another adjournment. Based on Mr. Johnson's motion, Mr. McPeck seconded and the motion carried unanimously. APPLICATION ADJOURNED TO DECEMBER 7, 2009

10-09-03 AREA VARIANCE: ANTHONY UCCI, 38 COCHRAN HILL ROAD,
POUGHKEEPSIE, NEW YORK Grid No. 6260-04-827291

Seeking relief from Chapter 240-28 Schedule B maximum lot coverage as percent of lot area (buildings, structures, outdoor deposit, paving) in order to construct a 28' x 36' barn that will cause his property to have 30% coverage where a maximum of 25% is permitted.

Mr. Johnson said the board had asked the Building Inspector to visit Mr. Ucci's property and determine what was pervious and what was impervious. The board had received a letter from the building inspector indicating that underneath the wooden deck and walkways around his pool and general area, the underlying material is sand and gravel. Therefore, the actual impervious lot coverage that is existing, plus the coverage with the proposed building will be less than the maximum allowed. Mr. Johnson said there is no reason to grant a variance because it is not required. Mr. Ucci agreed to withdraw the application. Mr. Johnson said the applicant can now proceed with the building process.

APPLICATION FOR VARIANCE WITHDRAWN

NEW BUSINESS

11-09-01 AREA VARIANCE: TERRY & ELLEN SPAIN, 70 FREEDOM RIAD,
PLEASANT VALLEY, NEW YORK Grid No. 6461-03-430368

Seeking relief from Chapter 240-58 which requires any building or structure housing farm animals to be setback a minimum of 100' from a property line in order to construct a 24' x 30' barn to house farm animals with a proposed setback of 75'.

Ellen Spain was present to represent the application. Ms. Spain was sworn in by Mr. McPeck.

Mr. Johnson asked Ms. Spain to describe what is existing. Ms. Spain said there is an old barn there now which they have been trying to hold together for 30 years. She said it's time to replace it with a more aesthetically pleasing barn which will also be more efficient than what is there now. The old barn will come down when the new one goes up and the animals are transferred. Ms. Spain said the existing barn has been there for 50 – 60 years and the new barn will replace the old, decaying structure. Ms. Spain added that they cannot put the new barn in the same space as the old one as they need a place for the animals during construction.

Mr. Johnson asked Ms. Spain to describe the surrounding area. Ms. Spain said they have one neighbor to the south, on the west side is Freedom Road, and Baird Park own the property to the north and east, and that is all hayfields. The barn will most closely impact Baird Park which is on the north side. Mr. Komorsky asked if she would be running any water or electricity to the barn. Ms. Spain said they take a hose down from the house just for what they need but there will be no plumbing or electricity.

Ms. Swanson asked if there was any reason why they could not move the barn closer to the house. Ms. Spain said they can't move it any closer to the house because the septic is located there, and Ms. Spain indicated on the map where the septic was, to show that the septic field runs between the house and the proposed barn location.

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

Mr. McPeck said he had no problem with this. A beautiful barn will replace an existing barn.

Mr. McPeck made a motion to grant Terry and Ellen Spain relief from Chapter 240-58 which requires any building housing farm animals to be setback a minimum of 100' in order to construct a 24' x 30' barn with a proposed setback of 75'. Mr. Johnson seconded, and the motion carried unanimously. VARIANCE GRANTED

Mr. Johnson said in terms of the findings, he summarized that the application is considered a Type II action and exempt from SEQR review. Concerning the character of the neighborhood and detriment to nearby properties, it is an existing farming business and the proposal is to replace an existing barn with a newer, more efficient and better looking one, so there should be no change in the character of the neighborhood and no detriment to nearby properties by erecting the new structure.

In terms of alternative methods, the existing barn is old and it would be more efficient to erect a new structure rather than attempt to patch up the existing structure.

The variance requested is moderately substantial. The setback will be 75' rather than the required 100' but the other setbacks from the road and back property line are met.

The area which is impacted by the setback is a portion of Baird State Park. However, it is being used as a farm field at this stage so there is no public access to that area. The farming nature on the property is compatible with the use by Baird Park of the area.

There should be no impact on the physical or environmental conditions of the neighborhood and if anything, should be improved by having a better structure for housing the animals.

The difficulty is self-created in the sense that the applicants have owned the land for a long time and the wear and tear on the structure has required the barn to be replaced. However, the benefit to the applicants outweighs the self created issue.

Mr. Johnson asked if there were any comments on those findings. Ms. Swanson said by looking at the plot plan it looks like the old barn is in violation of the setback on the eastern (back) boundary. The new barn will make the property less nonconforming.

Mr. Johnson added that they had received a response from the Dutchess County Department of Planning and Development indicating that this was a matter of local concern.

11-09-02 USE VARIANCE: HOLLY MCGRATH, 49 STORY BOOK LANE,
PLEASANY VALLEY, NEW YORK Grid No. 6462-04-690436
Seeking a use variance in order to operate a woodcutting business in an R-120 zoning district.

Daniel Fredenburgh, 49 Story Book Lane was present to represent the application. Mr. McPeck led the swearing in of the applicant.

Mr. Johnson asked Mr. Fredenburgh to describe the neighborhood and what is going on there. Mr. Fredenburgh said Story Book Lane is a private road and there are approximately 6 houses in the community. He and Ms. McGrath live at the end of the road. The houses are close together at the top of the hill but they do maintain the roadway. It is a very secluded, private area and they want to be able to cut and split firewood there. It does require storing some equipment there as well as a couple of trucks. The trucks are also used to maintain, repair and take care of the roadway. They are also used in the firewood operation. Mr. Johnson asked if the equipment is also used off the property. Mr. Fredenburgh said just to deliver firewood.

Mr. Komorsky asked if the cutting and splitting of wood is a seasonal business or is it year round. Mr. Fredenburgh said it is year round.

Mr. McPeck asked if any of the neighbors were family members. Mr. Fredenburgh said no. He added that he had letters from a couple of neighbors and one of his neighbors was present tonight.

Mr. Polhemus asked what his intention was for volume. Mr. Fredenburgh said on an average the truck goes out twice a week which would be about 4 cords of wood and he uses the big dump truck for conveying the wood. Mr. Polhemus asked if a log truck comes in a couple of times a week with logs. Mr. Fredenburgh said yes.

Mr. Johnson said the application is in the name of Holly McGrath. He asked if Mr. Fredenburgh is related. Mr. Fredenburgh answered that she is his fiancé.

Mr. Komorsky said with all the equipment, was there any hazardous material, e.g. diesel or gasoline or anything else that goes with a wood splitting business. Mr. Fredenburgh said he uses diesel oil in the trucks and equipment which is brought in, in a 100 gallon transfer tank in his truck.

Mr. McPeck asked if the business is strictly firewood and that he is not milling the logs. Mr. Fredenburgh said that is correct.

Ms. Swanson said the application said a violation had been served and she asked what the violation was. Mr. Fredenburgh said it was for operating a business in a residential neighborhood. He had set up and started cutting firewood and the Building Inspector told him he had to stop and could go to the Zoning Board of Appeals.

Ms. Swanson said he had mentioned that the vehicles were for road maintenance. Were they just for the private road. Mr. Fredenburgh said they are the next to last house on Story Book Lane and his vehicles take care of the private road. They do the snow plowing in the winter time and also repairs to the road.

Mr. Komorsky asked how the waste issues are handled. Mr. Fredenburgh said he carts everything out.

Mr. McPeck asked if he needs any other equipment, especially for dealing with the sawdust. Mr. Fredenburgh said there is not a lot of sawdust. He uses the dumpster truck container for the sawdust and other garbage debris and that is taken away to a recycling facility. The other container is used for firewood deliveries. Mr. Komorsky asked if additional structures would be needed for the equipment. Mr. Fredenburgh said no. He said the whole operation requires an area 8' wide by about 23' long and that is all the ground that is affected.

Mr. Bisceglia asked how big is his lot? Mr. Fredenburgh said it is almost half an acre.

Mr. Komorsky asked if the neighbor up the hill had been averse to any of the equipment that is there. Mr. Fredenburgh said that neighbor was present tonight. Mr. Komorsky said he wondered whether there were any noise issues with saws, etc. Mr. Fredenburgh said he usually does the work on Saturdays and it's not a full time operation. He works in the evening full time.

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

John McCann, 52 Story Book Lane was sworn in by Mr. McPeck. He said he has no problem with what is being done there. His biggest problem was with where he had his vehicles and Mr. Fredenburgh has taken care of that. Mr. McCann is very rarely home and does not hear the equipment. Mr. McCann shares his loader when needed and they work together.

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. Polhemus asked for the reason why the building inspector had issued the violation. Mr. Fredenburgh said he had a neighbor who had concerns but these have been rectified. He had parked a truck where it wasn't welcome and he was asked to move it.

Mr. Johnson said the board needed to go through the SEQR process since this is a use variance. A short EAF had been submitted. The application seems to be for a relatively small wood cutting operation so it does not appear to exceed any of the thresholds in the SEQR regulations. Mr. Johnson said that he believed the ZBA would be the only board reviewing this activity as a use variance so there would be no other involved agency. In terms of adverse effects there are trucks bringing in loads of wood and then hauling out the wood once it has been split up. There are also some effects in terms of getting rid of the remaining wood cuttings that are not sold. There are also some issues of noise although the applicant said the work is generally a Saturday operation. There don't

appear to be any major effects on the surrounding environment in terms of animals, trees, etc. since the lengths of wood would be brought in from other places. Mr. Johnson continued that it is a fairly rural area off a small road so there are potential issues with truck traffic. but otherwise there seem to be a lot of other people who burn firewood in the area so it is not a particularly different use except for the scale of the use. There don't appear to be other long term effects that they haven't identified already. Mr. Johnson said he felt that the board could determine that their deliberations as to whether they should grant the use variance or not will consider the environmental impacts and that they have established them through the testimony heard so far. Therefore, Mr. Johnson proposed that they declare a negative declaration on this application in terms of the environmental impacts as the potential impacts have been identified and in the process of presenting the use variance will be mitigated. Mr. McPeck seconded and the motion carried unanimously. **NEGATIVE DECLARATION**

Mr. Johnson said with a use variance a number of tests have to be met before they can grant the variance.

Ms. Swanson said she had a technical concern in that nowhere in the application is Mr. Fredenburgh's name mentioned as being the person to represent Holly McGrath, the owner of the property so she has a problem with taking his testimony in the public hearing. Secondly, Ms. Swanson said the showing of a deprivation of economic use of the property has not been made. This is a residential property and there is nothing to indicate that this can't be used or sold as a residence.

Mr. Johnson said he would like to walk the board through the various tests that have to be met for a use variance and get comments from the people. Ms. Swanson has indicated one area of concern. If they can come up with some findings they can agree on then they can decide on whether to grant the variance or not. The courts like to have the board have a finding document so they can have a quick way of deciding whether the board came to the right conclusion or not.

Mr. Johnson said the first test for a use variance is whether the applicant can realize a reasonable rate of return and this should be shown by significant financial evidence and the lack of return should be substantial. This is a residential area and there is no indication that the property is not used as a residence so there is a question as to whether the application meets that test or not.

Ms. Swanson said most of the time a use variance is applied in a commercial or industrial area where the owner of the property cannot use it any more for a particular reason and then it can't be sold under that use. This property is zoned residential, allowing for a place to live, not for a place of business. Wood cutting is not allowed under the home occupation portion of the code, probably because of the noise factor.

Mr. Fredenburgh said part of the significance of the property is that they are secluded. It is not the standard residential neighborhood where there are houses in front and back and on either side of you. Beyond him there are approximately 40 acres of vacant land.

Mr. Bisceglia said this is a residential area and they are setting a precedent if they allow this. Everyone has a house to live in and they need a certain amount of peace and quiet. They don't expect to have a business run where they live. Mr. Fredenburgh said his neighbors know what to expect. He presented letters from his neighbors that stated that they have no problem.

Mr. Johnson said the first letter was from Michael and Andrea Fanelli: "We do not mind our neighbor, Dan, processing fire wood at home. There is no issues at hand with noise or other issues". There was also a letter from Denise Dooling, 37 Story Book Lane stating "I understand and agree that these trucks are needed by them for the maintenance that they do on this private road on behalf of the residents of this road. I have no objection to the maintenance of these trucks at this address". Kathrin Muller of 15 Story Book Lane said she has no objections to the wood cutting business on Story Book Lane.

Mr. Bisceglia asked where the Fanelli's live. Mr. Fredenburgh said they live down the street, he believed No. 13, which is out of range of the notification requirements.

Mr. McPeck asked how many cords of wood does he cut in a week. Mr. Fredenburgh said not more than 5 cords.

Ms. Swanson asked what his arrangement was for the road maintenance, and do the neighbors pay him a certain amount to take care of the road and snow plow. Mr. Fredenburgh said they hadn't come to an agreement concerning the snow plowing but they split the bill for the road maintenance.

Mr. McPeck said if he doesn't get the use variance it appears he will lose about \$500 a week.

Mr. Johnson said in terms of reasonable return, by not selling firewood the applicant would be losing approximately \$500 a week. Mr. Bisceglia said a cord of wood is about \$200.

Mr. Johnson continued that the next point of hardship relating to the property is whether it is unique. The property is unique in that it is on a private road in a very rural part of town. The hardship would be that the maintenance of the road is a private road maintenance and the applicant would use some of his firewood equipment for the road maintenance which would be unique to this particular area. It would not apply to the substantial portion of the zoning district as this is a private lane as opposed to a public road, and the maintenance of the road is performed by the people living on it. On the other hand, it is a residential area and there is an existing house so the firewood business is not part of a standard residential use.

Another point of hardship to be addressed is if the requested use variance will not alter the essential character of the neighborhood. Mr. Johnson said his earlier comments concerning the rural aspect and the fact that it is a private road and that some of the

neighbors have indicated that they have no issues with the use would indicate that it would not affect the central character of the neighborhood.

Ms. Swanson said they had not received any testimony as to the frequency of the operation. She thought maybe the neighbors might have a problem with noise every Saturday. Mr. McPeck said all the neighbors were notified of the meeting and could have been here. Mr. Komorsky said no adverse testimony had been received over the years. Mr. Fredenburgh said he had been cutting wood there for 2 years.

Mr. Johnson said the last consideration was whether the hardship is self created. Mr. McPeck said he did not feel it was self created at all. Nothing was spent on remodeling the property.

Mr. Johnson said a minor cutting business would be one thing but there would be nothing to stop it becoming big business if the use variance was granted. Conditions could be put on the use which would restrict it. Mr. Fredenburgh said NYS DEC has put restrictions on the firewood business. Wood cannot be transported more than a 50 mile radius of the source of the wood.

Ms. Swanson said her concern was that if they grant a use variance in a residential neighborhood like this, a precedent would be set and anybody could come in and ask to have a variance for any sort of business. Mr. McPeck said that did not mean they would have to grant other variances.

Mr. Johnson said that restrictions could be put on the variance if they decided to grant it and some discussion ensued as to what restrictions might be appropriate.

Mr. Johnson proposed that they go through the items again and take a vote to see if there was a majority who favored it. Each one of the tests had to be passed.

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.

Mr. Johnson said Ms. McGrath owns land and the return from the land and buildings is not reasonable. It is a residential area and the primary use is for a residence. These residences are in a private subdivision. The applicant needs this subsidiary business in order to finance the maintenance of the road in the subdivision.

Mr. Johnson asked for comments from the board. Ms. Swanson said she was not in agreement. Mr. Polhemus said he had a concern about what rate of return they should expect from a residence. Mr. Johnson said the lack of return is what you would expect from a standard residence. Mr. McPeck said people work out of their homes all the time. Mr. Bisceglia said the applicant just wants to make extra money. He said this was not a permitted use but he was willing to allow it. Mr. Polhemus said he had no problem with someone wanting to make extra money. He would like to see some restrictions on the use to allow for protection to the other property owners.

2. Alleged hardship relating to the property is unique.

To address this test, Mr. Johnson said the board needed to look into whether there is something that presents physical features, etc. preventing development; questions of whether one could use the property for permitted uses as opposed to what the applicant is asking for. Ms. Swanson said she does not see any hardship. Mr. McPeck said he did not know what this test means. Mr. Johnson said the point they are trying to address is what is to keep someone else from asking for the same privilege. Is there something special about this particular application that makes it different from the board re-writing the zoning? The board cannot change zoning; only minor variations can be made.

Mr. Johnson said that as a private community that maintains its own roads and uses certain equipment makes it unique and the firewood business would be a way of deferring the cost.

Ms. Swanson said Mr. Fredenburgh said his neighbors chip in on taking care of the road and are going to come to some arrangement for the snow plowing so she does not see the relationship between the wood splitting and all the equipment. Mr. Fredenburgh said the loader for the firewood is used for maintaining and repairing the road. One of his trucks has the snow plow on it and the other, which is a dump truck, he uses to go to the quarry to pick up material for spreading.

Mr. Komorsky said another aspect of the uniqueness is the rural nature of the area, especially with the 40 acres behind the property.

Ms. Swanson asked if that was a hardship. Mr. McPeck said the uniqueness is that he won't be a burden to anyone else in the area. Ms. Swanson said maybe not now but what if a neighbor wants to sell their house 6 months from now and a potential buyer hears the noise? Mr. McPeck said he agreed and a restriction could be put on the variance.

Mr. Fredenburgh said the hardship would be on the whole community if he has to pull his trucks out.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.

Mr. Johnson said there seems to be a lot of firewood cutting in the area. It is a rural area where firewood cutting is in character. If they limit it to a fairly small operation there would still be a noise impact.

Ms. Swanson said a violation had been filed on the business so that is not the way the neighborhood is supposed to be.

4. The alleged hardship has been self-created

Mr. Johnson said the hardship is self-created. Ms. Swanson said it is self-created as he does not have to have this business. Mr. McPeck questioned whether it was self-created. He did not feel that it was self-created.

Mr. Johnson said they did not have a uniform agreement. He suggested that the board members should indicate whether they were generally in favor or not in favor of granting the variance. If there were enough members in favor then they would consider some limitations on the variance.

Mr. McPeck said he was in favor of granting the variance. Mr. Polhemus said he was in favor of granting the variance with acceptable limitations. Ms. Swanson said she is opposed to granting the variance but wanted to make it clear she did not have any objection to Mr. Fredenburgh having an extra business but she feels that legally it is not appropriate under our zoning code. Mr. Bisceglia said he was willing to grant the variance under certain conditions. Mr. Bisceglia said he does not feel this should run with the land but should be limited to a certain amount of time. Mr. Johnson said his understanding is that use variances run with the land.

Mr. Johnson said it appeared there were three board members who were favorable to grant the variance with conditions. He said three conditions had already been discussed, one being a time limit, both for days of the week and hours of the day. After some discussion it was agreed that the time limit for operation would be 9 a.m. to 4 p.m. on Saturdays and 4 hours during the week.

Another condition was number of cords and it was agreed to limit the operation to ten cords a week.

The last condition was that the business should be limited to no on-site pick up.

Mr. McPeck made a motion to grant Holly McGrath of 49 Story Book Lane a use variance to operate a woodcutting business in an R-120 zoning district with the restrictions noted above. Mr. Bisceglia seconded. The vote was as follows: Mr. McPeck Aye, Mr. Bisceglia Aye, Mr. Polhemus Aye, Ms. Swanson Nay, Mr. Johnson Nay. The motion carried 3 votes to 2. **USE VARIANCE GRANTED WITH RESTRICTIONS**

There being no other business before the board, Mr. Johnson made a motion to adjourn the meeting at 8:52 p.m. Mr. McPeck seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley
Zoning Board of Appeals Secretary