

April 27, 2010

**PINE PLAINS ZBA MINUTES
APRIL 27, 2010**

IN ATTENDANCE:

Scott Chase, Chairman
Bruce Pecorella
Jane Waters
Steve Patterson
Margo Jackson

ALSO PRESENT:

Drew Weaver
Warren Replansky
One member of the public

Chairman Chase called the meeting to order at 7:30 pm.

Chase advised that the purpose of the meeting was to go over the revised application materials to see that they made sense and were understandable. He also stated the Board would like to get Replansky's comments.

Chase advised he would be changing the order of the agenda and wanted to look at the minutes first. Waters moved to accept the minutes of the March 23 meeting, second by Pecorella. All in favor. Motion carried.

Chase asked Replansky for his comments on the application materials provided. Replansky stated he would go through form by form and give the Board his recommendations. Replansky started with the application for use variance. He stated that the Board would need an Agricultural Data Statement, if applicable, as stated under Section 283A of the Town Law. There should be a question on the application asking if the property is within an Ag District that contains a farm operation or if it is on property within 500 feet of same. Replansky stated that each application should reference the applicable provision of the Zoning Law that applies and refer the applicant to review that. For the use variance application they should be referred to Article 14, Section 191. Replansky stated that each referral should show Zoning Enforcement Officer/Code Enforcement Officer because the Town does not have a Building Inspector under their law. Replansky stated that that the application should state that a copy of the administrative decision appealed from is required and has to be attached. Replansky stated that contact information for any representative of the applicant should be requested on each application. Replansky stated on page 168 of the Zoning Law it sets forth the grounds for a use variance appeal and what is required.

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He stated the first question he would ask on the application is please state why the applicable zoning law regulations and restrictions when applied to your property result in unnecessary hardship. He stated in addition they should be asked are you unable to realize a reasonable return from your property for any of the uses permitted by the Town Zoning Law. Short discussion of use variance followed. Replansky stated he would stay away from guiding them into what the Board wants to see them show as the burden is on the applicant to put together their application. Replansky stated the checklist should be deleted from the application package. He feels it is the applicant's burden to prove their case. He feels if the Board starts suggesting what information they want to see, the applicant will feel that supplying the information should automatically give them the use variance. Replansky stated the applicant should create their case. Replansky changed the language on the several questions so it is consistent with the Zoning Law. Replansky suggested adding a note to each question to use additional sheets of paper if necessary. He stated he would also ask if the variance requested is the minimum variance that is necessary to address the unnecessary hardship while at the same time preserving and protecting the character of the neighborhood and health, safety and welfare of the community. Replansky stated that Proper could make a copy of his notes to help in revising the applications. Replansky stated that he was not sure that the requirement of a survey was necessary. He stated there is nothing in the statute that requires this. Replansky stated if the Board requests verification, it would need a notary stamp. He stated law does not require the verification. He stated the worksheet might be something to use internally while going through the decision-making process. He stated he would stay away from the requirement list. Replansky stated he would like the Board to prepare a resolution containing a statement of findings and the decision. Replansky stated the Board will vote on how they want to act and give the reasons for supporting the decision and then he, in conjunction with the Chairman, would prepare a draft resolution containing the statement of findings for them to vote on. He stated the court would look at this if it were challenged so it is a good idea to have an attorney prepare it. Waters asked Replansky about the suggestion of the NY Planning Federation that the ZBA have the public hearing should be the first time the Board meets with the applicant. Replansky stated that is not the way most Boards operate. He stated they have a preliminary meeting with the applicant to review the application first. He stated the Board would require applicants to enter into an escrow agreement with the Town for reimbursement of consulting fees. Short discussion of the public hearing process followed. He stated the environmental review and the 239M referral to Dutchess County Planning should be done prior to a hearing.

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Replansky stated the type of variance should be stated on the notice to adjoining property owners.

Replansky stated that on all forms there should be an indication to print or type.

Replansky stated on the application for area variance the Building Inspector title should be replaced with Code Enforcement Officer. Also the copy of the administrative decision should be attached. Referral to Article 15, Section 100-91C should be noted.

Replansky went over the difference between a use variance and an area variance. A use variance is where someone is seeking a variance from the use requirements of the Zoning Law. An area variance is a variance from the bulk requirements of the zoning law such as set back requirements, road frontage requirements, etc. Short discussion of area variances followed.

Replansky stated that each application should refer to the escrow requirement.

Replansky asked for some changes in language on the area variance application to make it compatible with the language in the Zoning Law.

Replansky stated there is no such thing as an application for interpretation. He stated there is an application for an appeal from an administrative determination. He stated in deciding that appeal the ZBA has the power to interpret the Zoning Law. Wording on the title of the application to be changed and refer to Section 191 of the Zoning Law. Chase asked if this would be how a neighbor would complain about an administrative determination? Replansky stated yes. Short discussion followed.

Replansky stated Weaver has to make sure the determination is filed either in his office or the Town Clerk's office and once it is filed that is when the time period starts.

Replansky advised that the application to expand a non-conforming use should be an application to change a non-conforming use. Under Article 13, Subsection A3, ZBA approval is required when there is change of a non-conforming use to another non-conforming use. This provision should be referred to on the application. Short discussion followed.

Replansky stated that the ZBA could make any determination that the CEO could have made in the first instance when the case is on appeal.

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Replansky advised he would not use the notice of action form and put all decisions in a resolution that can be attached to a simple notice of determination form.

Replansky advised that nothing the ZBA does gets filed with Dutchess County. Replansky advised that the ZBA determination goes to Weaver who supplies it to the Planning Board if necessary. Replansky advised the decision should be filed with the Town Clerk within five business days of the decision. Replansky stated the time for appeal doesn't start until it is filed.

Short discussion of SEQOR followed.

Replansky stated that the notification of adjoining property owners is the responsibility of the ZBA. Replansky stated that Proper should verify the information received. Weaver asked what happens when the return receipt cards are not received. Replansky stated that proof of mailing is enough.

Replansky stated that the application fees were approved at the last Town Board meeting.

Short discussion of escrow accounts followed. Replansky stated for every appeal there should be an escrow agreement. Replansky stated he would do the first two or three and then would give Proper a form to use. Replansky stated he would consult with the engineer and the planner upon receipt of the application to decide on initial deposit. Replansky stated for a simple area variance it would be \$500 but for something more complex it might be a couple of thousand.

Waters asked what type of indemnification they have as Board members. Replansky stated the Town covers all officials.

Meeting adjourned at 8:45 pm.

Respectfully submitted by:

Nancy E. Proper
Secretary

Scott Chase
Chairman