

August 24, 2010

**PINE PLAINS ZBA MINUTES
AUGUST 24, 2010**

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

ALSO PRESENT: Drew Weaver
Rosemary Lyons-Chase
Ten members of the public

MODO'S MOBILE HOME PARK: Daniel Rothvoss and Doug Weaver represented the applicant. Chairman Chase started by explaining why the applicant was asking for an area variance. The applicant already owns 14 foot mobile homes and the zoning law calls for any mobile home that is replaced to be 16 feet. Chase stated that there are issues that go beyond the dimensional issues. Chase stated that regardless of the ZBA's decision, the applicant still has the ability to go to the Planning Board for site plan review and also a special use permit application. Chase stated that this Board is not charged with site plan review or reviewing Health Department issues. Chase stated the Board's sole consideration is to whether or not the applicant meets the area variance requirements for placing 14 foot wide mobile homes. Chase stated the public is welcome to make comments but suggested that they tailor their comments to address the area variance. Chase stated that the Board would listen to comments about traffic, Health Department, drainage but is not sure they would come into play in what the Board is looking at. Chase stated again the Board is solely making a decision on the issue of 14 foot versus what the zoning law requires which is 16 foot. Chairman Chase called the meeting to order at 7:30 pm by reading the public hearing notice. Chase asked the applicant if he would like to speak. Rothvoss stated that he removed a mobile home approximately two years ago. He got building permits to put another one in and it lapsed. He got another permit and that one lapsed also. He stated he didn't know zoning was going into effect and bought the mobile homes after the fact, approximately two months ago. He stated he wants to replace one mobile home that is there now and place one where the one was removed. Rothvoss stated he thinks it conforms to the lot size. Chase asked the Board to comment first and then the public. Patterson asked if Rothvoss could exchange the 14 footers for 16 footers since they were only purchased a couple of months ago. Rothvoss stated he couldn't. Patterson stated he was asking

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because a lot of the difficulty seemed to be self-created. Chase stated that area variances that come into play with one, two or three-family homes are Type II actions and not subject to SEQR. Chase stated that if the applicant were to go before the Planning Board, it would be subject to SEQR. Waters stated the law does say the Board has to take into account the benefit to the applicant versus the health, safety and welfare of the neighborhood so some consideration of the environmental effects would be within the Board's purview. Patterson stated if he had a Board of Health determination it would make it easier for him to make a decision. Waters stated that on page 23 under 100-21 for manufactured homes, single or double-wide, E says a lot shall meet the minimum requirements of the zoning district in which it is situated as set forth in Table B, Schedule of Bulk Regulations, and no more than one manufactured home dwelling per lot is permitted. Waters stated this mobile home park is a non-conforming use which doesn't take into consideration the lots so that may answer the question as to why the lot size doesn't come into play. Chase reiterated that if the applicant were to replace a mobile home with a 16 foot one, it wouldn't even be coming before this Board. Chase stated that if he wanted to then add the other mobile home and make it a 16 foot one, it would then be reviewed by the Planning Board not the ZBA. Chase stated that the Board is only to consider if the applicant has the ability to use 14 footers versus 16 footers. An unidentified member of the public stated that wasn't her interpretation of the law. She stated that if you don't replace within one year you lose the ability to do so. She stated that if the mobile home was removed two years ago, it should not be replaced at all. She stated the only issue should be the existing one being replaced. Chase stated one can apply to expand a non-conforming use by up to 25% so if there are 5 mobile homes and you add another that would be a 20% expansion. Chase stated the non-conforming use is the use of the property as a mobile home park and that exists. Pecorella asked the public to please identify themselves before they speak for the record. Chase opened the floor to the public. Chase requested that each person state their name and address. Dave Cookingham stated his property border the trailer park. He stated there is a septic problem and it is close to his shallow well. He stated that a Health Dept. representative visited the property the previous week and told him it was a failed septic system. He stated there is a serious health issue that is not being addressed. He stated the septic was running past his garage, underneath Route 199 and into a pond which horses are drinking out of. He stated he called DEC. He stated this park has diminished the value of the homes by at least 50%. He stated that the Dutchess County Sherriff or the State Police are there several

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times a week due to problems at the park. He also stated there are unregistered motor vehicles going up and down the road from the park. He stated he called Mrs. Rothvoss approximately a year ago to complain. He stated that he didn't believe there was any hardship created that would warrant a variance. He stated that they can't deal with the units they already have without adding more. He stated he wants an engineer to go and look at the property. He stated the septic system has been failing for years and he has been trying to get someone to do something about it. Unidentified member of the public seconded what Cookingham said. Unidentified member of the public stated that when a town has new zoning a lot of times people don't understand it. She stated if this were a new application he would not be able to put that many mobile homes on that lot. She stated the Zoning Board has to take a hard stand on hardships with regard to area variances and if the hardship is not proven, the variance should not be granted. She questioned the meaning of non-conforming use and asked for clarification from the Board. She stated that her interpretation is if you discontinue the non-conforming use, you cannot bring it back again years later. Scott Link stated he owns land on Rt. 199 and vacant land that borders next to the trailer park. He stated that in the three years he has been coming up to enjoy his house and property he has seen a great diminish in the trailer park character. He stated he echoes all the previous comments. He stated anyone given a variance should be a responsible business owner who wants to uphold the character of the community and that is not what he is seeing. He stated he has been advised that there has been trespassing on his land by motor vehicles from the park but has not witnessed it himself. Dorothy Whitaker stated that she previously lived in the park for fifteen years. She stated when the previous owner had it there were rules and regulations that were enforced and the park was maintained. She stated now the park is run down and the sewer problem is disgusting. She asked the Board to deny the variance. Unidentified member of the public stated the septic does overflow into her pond and she is concerned about it. She stated that she is concerned about her safety with regard to the behavior of the occupants of the park. She agreed with all the previous comments. Unidentified member of the public stated the goal of zoning should be to conform as closely as possible to the regulations. Daniel Rothvoss stated he knows the individuals the public is speaking about and asked why they didn't call him if there were problems. Discussion followed between the public and Rothvoss about the tenants in the mobile home park. Pecorella stated he felt this was a discussion for outside of the meeting and not appropriate for the meeting. Cookingham asked how old the units are that will be placed in the park if the variance is granted. Rothvoss stated

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that one is a 1999 and one is (unintelligible). Unidentified member of the public asked if there was a limit on the number of people who can occupy these homes. Chase stated he didn't believe there was anything in the law that specified this. Discussion followed. Web Farnham stated the distance between wells and septic tanks were gone over in the 60's when the trailer park was established. Cookingham stated he wants to know that the septic is capable of supporting what is there. Cookingham stated that the water supply for the park should be chlorinated and it is not. Rothvoss stated the BOH comes every three months to test the water. Scott Link stated that he believes the zoning was put into effect to discourage older mobile homes so to give this variance would not necessarily move the park in a positive direction. Waters stated it is her understanding that the Planning Board can require the Health Dept. issues be addressed. Pecorella stated they would have the Town Engineer and Dutchess Co. Health Dept. look at it. Waters stated a decision does not have to be made this evening. The Board could discuss the issues with Replansky to see how to move forward. Patterson stated the septic is a big issue. Pecorella stated the hearing should remain open until the Board receives direction from Replansky. Waters stated she is also concerned about hearing a slightly different story about the purchase of the trailers than was heard previously. She stated it was her understanding that the trailers were purchased a long time ago not a couple of months ago and not after the zoning passed. Rothvoss stated he wasn't aware that the zoning law was going into effect. Waters stated that Doug Weaver was aware. Rothvoss stated that maybe Weaver knew but he didn't. Patterson stated the mobile homes proposed have more square footage but are they really upgrades. Discussion followed. Chase stated that he would like photographs of the proposed upgraded mobile homes, would propose to hold the hearing open until September and also would like to check in with Replansky on the issue. Chase stated that if the applicant wants to place 16 foot mobile homes in the park, he can go directly to the Planning Board without a variance. Waters stated all the issues the public is raising would then be part of what the Planning Board would discuss. Patterson stated that the Board needs to find out how to move ahead procedurally. Chase stated that he feels the Board's only decision is on whether the trailers should be 14 feet or 16 feet and all the other issues are Planning Board ones. Pecorella made a motion to keep the public hearing open and to seek legal counsel on procedural issues; second by Jackson. All in favor. Motion carried. Rothvoss submitted copies of the cancelled checks for the mobile homes. Waters stated that Replansky should attend the September meeting. Rothvoss asked if the Board could advise him what their opinion is right now as to whether or not the variance would be granted.

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Discussion followed. The Board concluded they needed further information to make a decision and could not offer an opinion.

Motion by Patterson to approve the July 27 minutes; second by Pecorella. All in favor. Motion carried.

Motion by Pecorella to adjourn at 8:45pm; second by Patterson. All in favor. Motion carried.

Respectfully submitted by:

Nancy E. Proper
Secretary

Scott Chase
Chairman