

January 22, 2013

**PINE PLAINS ZONING BOARD OF APPEALS MINUTES
JANUARY 22, 2013**

IN ATTENDANCE: Scott Chase, Chairman
Jane Waters
Bruce Pecorella
Margo Jackson
Helen Fuss, Alternate

ABSENT: Michael O'Neill

ALSO PRESENT: Drew Weaver, ZEO
Don Bartles, Planning Board Chair
Rosemary Lyons-Chase, Town Board member

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

VTM HOLDINGS: Applicants Timothy and Vivian Berlinghoff were present. The applicant would like to construct an addition to his property located at 40 Myrtle Avenue which constitutes a 50% increase of the existing footprint thus creating the need for the applicant to obtain a use variance under the current Zoning Law. Chairman Chase explained that this is a preliminary discussion of an expansion of a non-conforming use. Chairman Chase stated he had never been in the applicant's building but had been by it. Chase advised it was the Doyle and Coon Oil Supply building. The applicant stated yes. Chase advised the proposal is to expand 50% and the difficulty is with the Zoning Law. Chase advised he spoke with Town Attorney Replansky who was unable to attend due to an unexpected court issue. Chase stated the difficulty is since the applicant is a non-conforming use if you want to expand more than 25%; you have to request a use variance from the ZBA. Chase stated if you go to how they are administered it says that the applicant is required, when they have more than a 25% expansion, to get a use variance. Chase stated that use variances are very difficult to give. Chase stated State Law sets down four very difficult tasks and one of them is that the applicant cannot realize a reasonable return on the property on anything other than what you are doing. Chase stated the difficulty for him is that if you have a booming business that you can expand obviously you can use the property just for what it is. Chase stated he thinks the applicant would have a difficult time meeting the tasks set forth for a use variance. Waters stated that the applicant would have to go through every use that is permitted for the property and bring in financial records showing you can't make a return. Chase stated you have to prove the property is unusable and you can't make a financial return on the property. Waters stated that obviously the applicant has a lot of trucks and she sees them all over and are doing well which is great but the Board can't just give the applicant an area variance which is easier to get because the Law requires a use variance be given. Chase stated from a parcel standpoint the Board might look at it and not have

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any difficulty but from what the Law says the applicant would have a very difficult test to meet. Chase stated he would advise that the applicant do the 25% expansion and go ahead. Chase stated that otherwise the applicant would have to show up with a lot of documents and would probably want to get some legal counsel and he feels it would be a tough row to hoe. Chase advised if they go forward with a 25% expansion they just have to get approval from the Planning Board. Weaver stated that is correct. Waters asked if they missed anything. Weaver stated he didn't believe so. Discussion followed. Chase advised that the tests for a use variance are set by State Law but the percentage is set by the Town. Chase stated this is a lot in a residential district and the applicant would have to show that it couldn't be used as a residence. He stated the applicant would have to show it couldn't be sold for any of the other permitted uses in the district. Waters stated they would also have to show they couldn't make any money with the use that they are using it for. The applicant stated they are growing out of the space. Discussion followed. The applicant stated they will redo the plans to comply with the 25% and go back to the Planning Board. Proper advised to have the new plans to her by February 6th. Bartles stated there was difficulty in interpreting exactly what they were looking for with regard to non-conforming uses and how to address them. Bartles stated he was hoping Replansky could have been in attendance to clarify why it went under this strict definition of a use variance. Waters stated because the uses that are allowed in a residential district don't include this. Bartles stated this is a pre-existing use and it is not as if you are coming in and asking for a new use. Waters stated it is because it the use that was on the property was fuel storage and distribution and not construction and electrical. Bartles stated it is a less non-conforming use than it was. Waters stated she agrees but the Board doesn't have the latitude to change it. Bartles stated he was wondering if the Board did have the latitude because they have the whole separate section of non-conforming uses. Chase stated the Board has to follow what the Law is. Bartles stated clarification is needed from Replansky whether or not the Board does have that discretion. Chase stated he spoke with Replansky who read the language and stated it has to be treated as a use variance. Chase stated the pre-existing use is whatever you were using it for at the time the Zoning was enacted. Discussion followed of permitted uses in that district.

OTHER BUSINESS:

Pecorella made a motion to approve the minutes of June, 2012; second by Waters. All in favor. Motion passed. Approval of September 2012 minutes will be on hold until the next meeting because only two members who attended that meeting are present.

Chairman Chase advised the Board that Dick Hermans has been appointed as the second alternate to the Zoning Board of Appeals.

Chairman Chase stated that every year one ZBA member should be reappointed and he did not see a reappointment. Proper advised that Jackson was reappointed at the reorganizational meeting. Chase advised he didn't see it.

Discussion of Oaths of Office followed. Waters stated that reappointments need to do the Oath when they start their new term and alternates need to do them every year.

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Pecorella made a motion to adjourn at 7:55 pm; second by Jackson. All in favor. Motion passed.

Respectfully submitted by:

Nancy E. Proper
Secretary

Scott Chase
Chairman