

September 28, 2010

**PINE PLAINS PLANNING BOARD ZBA MINUTES
SEPTEMBER 28, 2010**

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

ABSENT: Steve Patterson

ALSO PRESENT: Warren Replansky
Drew Weaver
Rosemary Lyons-Chase
One member of the public

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

MODO'S MOBILE HOME PARK: Daniel Rothvoss and Doug Weaver were present. Chase stated that Rothvoss advised that he wanted to change his application. Rothvoss stated at first he was going to withdraw the entire application but decided to replace the one existing mobile home only. Chase asked if he was still asking for the variance to have a 14 foot instead of a 16 foot and Rothvoss replied yes. Waters asked which mobile home he would be replacing. Rothvoss stated the second one on the right. Waters asked which one of the two he purchased would he be placing there if the variance was granted. Rothvoss stated the 1999 would be used. It is sitting on his property at the moment. Pecorella asked if the applicant would have to provide a different application and what the procedure should be to move forward. Weaver provided the Board with photos of the 1999 mobile home. Waters asked if they had any photos of the interior. Weaver stated no. Chase asked Replansky if the application needed to be redone as it was being revised to one replacement. Replansky stated no as the applicant was not adding anything but eliminating something. Chase stated the public hearing was not closed. Chase stated he feels there is a very narrow focus which is are they going to give relief from the 16 foot standard to allow a 14 foot trailer. Chase stated there are many other issues that were brought forth during the hearing and some Board members were concerned about procedural issues and what should be addressed or not addressed. Chase stated that the Board wanted some clarification from Replansky so he would like to pursue it with him. Chase stated that since they held the hearing open they should see if the public has any additional information to present. Waters stated that one issue that came up continually from the public was there were one or

September 28, 2010

more failed septic systems on the property and, while the Board doesn't do a formal SEQRA; they do have to take into consideration the health and welfare of the community and the impact on them. Waters stated this is something the Board wanted clarification on. Waters stated she thinks a little bit of work may have been done since the last meeting on the septic system. Replansky stated the septic system issue would be relevant for purposes of the application for the area variance to the extent that the location of a 14 foot rather than a 16 foot wide trailer would have an impact on the septic system issue. Jackson stated it wasn't just that as he was adding an additional trailer. Replansky stated there is one that is there that he is replacing and one that had been there years ago that had been removed. Waters stated this was the initial request. Chase stated they are back to just replacing one that is currently there. Replansky stated that they are now talking about one existing trailer that was there prior to the zoning law and all they want to do is replace a 12 foot trailer with 14 footer. Replansky stated there is a provision for that in Article 13, 100-70 (C) (page 147) which states nothing contained herein shall prohibit the replacement of any mobile home or manufactured home legally existing in the Town of Pine Plains at the time of the adoption of the Zoning Law provided that the replacement structure is in full compliance with both the 1976 Federal regulations for mobile homes and the requirements of the New York State Uniform Fire Prevention and Building Code and no existing nonconforming or non-compliances are increased. Replansky stated the issue would be whether the replacement mobile home meets the requirements of the 1976 Federal regulations and the NYS Uniform Fire Prevention and Building Code and he stated perhaps Weaver could sit down with the applicant to figure this out. Replansky stated if it does then it doesn't need a variance as it would be permitted to be replaced under that section because the mobile home park is a non-conforming use and that mobile home existed at the time of the adoption of the Zoning Law. Waters asked if this would apply even though on page 22 it says a manufactured home shall have the minimum size of 720 square feet and a minimum width of 16 feet. Replansky stated that would be for new applications not replacements. Replansky stated the question is what are the requirements of the 1976 Federal regulations. Weaver stated there is a paragraph on page 22, B(2) relating to this. Replansky stated he hoped they weren't inconsistent. Waters stated it says they shall be required to meet the standards set forth in (3) below which is where it says they have to be 16 feet wide.

September 28, 2010

Replansky stated that they do seem to be somewhat contradictory and it is going to require an interpretation probably by the ZBA as to how these two sections should be reconciled. Replansky stated this cannot be done this evening. He stated he is going to have to look at the two sections and give the Board some legal guidance on it. He stated there are problems when there is ambiguity in the Zoning Law it should be interpreted in a manner that favors the property owner. He also stated the question is what the intent here was. He stated it looks as if they are just a bit inconsistent. He stated that subparagraph 100-70 (C) appears to be superseded by 100-21 (B). Replansky stated the Board will have to decide how to interpret these two sections and then decide whether it does require a variance and, if it does, the Board will have to act on the variance.

Replansky stated he didn't feel comfortable advising the Board on that issue without giving it a little bit more thought and research. Replansky stated he will then provide the Board with a legal memo which will be used as guidance on how to interpret the sections. Waters stated that in most of the reading she has done and in one course that she took at Cornell Cooperative Extension, they tell you basically that if you give a variance you should be very careful because they can be a precedent for later variances. Waters stated that it seems that anybody who came in from here forward if this variance was granted, with a trailer that they wanted to replace with a 14 foot wide trailer, would have to be allowed. She stated she doesn't see that the argument that it is in a trailer park makes it unique. Waters asked if that was too broad a variance to give. She asked if the wording in the Zoning Law should be revised instead of granting a variance. Replansky stated that getting back to the original issue which is location of a 14 foot wide mobile home on a non-conforming mobile home park you have to actually decide the area variance issue. Replansky stated he has a concern with the precedential impact of such a decision. He stated courts have held you are not bound to make the same decision in every case that comes before you but you have to have a rationale for distinguishing one from another. He stated there are several Appellate Court cases and one Court of Appeals case that talks about the Zoning Board having the discretion to deny an application based upon the precedential value of a decision.

Replansky stated the problem that he has with this is that there is a new Zoning Law which clearly expresses and intent to have more modern, updated 16 foot trailers and eviscerating that issue if the area variance were issued. Replansky stated going back to the original area variance that would be a real problem for the applicant and the Board would be justified in relying on the precedential issue and denying it. Replansky stated there

September 28, 2010

are other issues here including the self-created hardship one which is pretty evident as the trailers were purchase a couple of years ago and not placed on the property. Waters stated the Board has copies of the checks and both were written after the Zoning Law went into effect. Replansky stated that is even worse for the applicant because the Zoning was in place whether they knew about it or not they can be charged with the knowledge of that and it is clearly a self-created hardship. Replansky stated courts have held that once you determine it is a self-created hardship it is not necessarily dispositive of the decision but it is a relevant fact and you can't go into the financial impact and relieve the hardship on the grounds that it would cost money to buy another trailer. Replansky stated the Board may have to decide on the side of allowing it to happen in replacing the one trailer. Chase stated the public hearing is being held open and he stated he felt the Board should see if the public has any other pertinent facts to give and then close the hearing and give Replansky time to research the issues. Replansky stated he will give the Board a legal memo and throw in some court citations on the issues he mentioned. Replansky stated that this may be one of the things they will have to tweak on the Zoning Law. Chase stated that he doesn't see that the two necessarily conflict. Chase stated that he and Jackson served on the Zoning Commission and wrote the first draft and their intention was to require that people upgrade their mobile homes so that neighbors are protected from people dragging in old ones and diminishing property values. Chase stated he and Jackson know what the intent was. Replansky asked if the 14 footer is a new mobile home. Rothvoss stated it is not new. Waters stated that one cost \$2500. and the other cost \$5000. She stated she didn't know if the cost was relevant. Replansky stated under what he cited it isn't necessarily relevant and is clearly a self-created hardship. Pecorella asked if it was personal hardship or business hardship. Replansky stated the Board should make no decisions based on a personal basis of the applicant. Replansky stated he needs some time to reconcile the two sections. He stated that ZBA's have to interpret the Zoning Law and if there are inconsistencies, which happens all the time, they have to reconcile that the best they can. Replansky stated if they see something that really needs to be fixed in the Zoning Law they can make a recommendation to the Town Board. Replansky stated it is a good idea to keep the public hearing open until the next meeting as the public may want to comment on this new issue. Replansky stated the public hearing did not need to be re-noticed. Waters asked if there should be a revision of the application. Replansky stated absolutely. He stated that you want to make sure the original portion of the application

September 28, 2010

has been withdrawn. Replansky stated the applicant should submit that. Chase stated the Board will hold the public hearing open and asked if there was any reason to take comment tonight. Replansky stated if anyone traveled they could make comment. Chase stated he didn't believe they had to notice tonight. Proper stated that the agenda did not reflect a public hearing continuation. Chase asked if anyone had comment. Cathy O'Connell stated that she was advised that the public hearing was not being continued tonight and then advised many neighbors so people didn't come thinking that it was not on the agenda. No further public comment. Replansky stated he was surprised by the 239M referral from the County. He cited an example similar to this concerning a sign that came back from the County as a matter of local concern but that the Board should take into consideration the precedential impact of the decision. Replansky stated he is very surprised that they didn't comment on this one the same way. Waters made a motion to continue the public hearing at the October 26 meeting; second by Pecorella. No further discussion. All in favor. Motion carried. Proper advised Rothvoss he would need a new application. He stated he had it at home and would drop it off the next day. Replansky stated he would get a memo to the Board for the next meeting.

EDWARD & AMANDA BISHOP: This was a preliminary discussion on an area variance for the Bishop property located at 230 Bean River Road. Waters advised that if you are on the Board and own a neighboring property you should recuse yourself and she wanted to state that she and her husband used to own the property behind the Bishops and sold it to the Allens thirty years ago and never met the Bishops so she didn't feel it was a conflict of interest but just wanted it on the record. Amanda Bishop stated they need a variance to put a new double wide mobile home on their property. She stated they need to move closer to the road. She stated the area behind their house is a mountain and cannot be used. She stated they want to replace their current mobile home with a new double wide. She stated the mobile home is 28 X 56 so it complies with the Zoning Law. She stated it would move them 16 feet forward. Waters asked if the back will be where the back wall is now. Mrs. Bishop stated yes. She stated they have a down payment on the home. She stated they met with Weaver in August but it was too late to be on the August agenda. Chase stated the Board will set up a site visit. Chase stated his preference is still to do the site visit on the day of the meeting. Pecorella asked what the distance from the culvert to the road was. Mr. Bishop stated he didn't have that but from the center line it was 35 feet. Waters stated that there are a number of older buildings that are quite close to

September 28, 2010

the road in that section of road. Mrs. Bishop showed the Board pictures of the property. Jackson stated it wouldn't be inconsistent with the neighborhood if others are close to the road. Chase stated this would have to have a County referral. Chase stated that he would recommend the public hearing be set for the October meeting. He stated that it didn't seem like a complicated issue and initially didn't see any problems. Mrs. Bishop asked if the Board thought that they would make a decision before the end of the year. Chase stated that, assuming nothing comes out of the woodwork, he sees no problem with giving a decision at the next meeting. Chase advised the applicant that all their neighbors would receive a notice of the hearing and he advised that it might be better for them to talk with as many as possible prior to the meeting. Chase advised that we notify everyone within 500 feet of the property line. It was decided to have the site visit on Tuesday, October 26 at 5pm.

Chase stated he would like to see the minutes approved with the following change: on page 2, line 25; the unidentified person should be Cathy O'Connell. Waters stated that when Mr. Rothvoss asked for informal feedback she told him her feelings about it and wasn't convinced by his argument and was concerned about setting a precedent. Proper advised that she put "discussion followed" in the minutes. Proper advised she would change it and Waters stated if the Board feels that "discussion followed" is enough that is fine. Motion by Jackson to approve the minutes with the change on page 2, line 25 as stated above; second by Pecorella. All in favor. Motion carried.

Motion by Waters to adjourn at 8:10 pm; second by Pecorella. All in favor. Motion carried.

Respectfully submitted by:

Nancy E. Proper
Secretary

Scott Chase
Chairman