

TOWN OF STUYVESANT
Zoning Board of Appeals
Tuesday, March 27, 2012

***Approved at the 1/21/14 meeting **

The Zoning Board of Appeals held a meeting on Tuesday, March 27, 2012 at 7:00pm at the Stuyvesant Town Hall. In attendance were Chairman William Vick, Jeff Jensen, Kent Keller, Paul Harpis, Margaret Pino, Amy Abatti, Steve Montie (alternate), Tal Rappleyea and William Better. Melissa Naegeli acted as Secretary to the Board in the absence of Shirley Narzynski.

Chairman Vick opened the meeting at 7:00pm with the Pledge of Allegiance.

Mr. Vick outlined the agenda of the meeting:

- 1) William Sager is requesting a variance for an apartment in his garage;
- 2) Frank Serpico and William Pflaum requesting an interpretation regarding actions of Mr. Frank Palladino; and
- 3) William Pflaum requesting an interpretation on the business operation of Knott Enterprises

Chairman Vick asked Mr. Sager to approach the Board. Chairman Vick explained to Mr. Sager what would happen and asked Zoning Enforcement Officer, Gerry Ennis, to report to the Board the facts.

Mr. Ennis said that Mr. Sager had requested a permit to build an apartment over his detached shed and to be allowed to connect to the existing residential septic system. Mr. Ennis reported that he had denied the application based on two reasons listed in the Town's Zoning Law. Section 7, paragraph #2 states that the addition must be within the 1 family residence or in an auxiliary structure constructed prior to the Zoning Law (which was dated May 2001). Mr. Sager's garage was built in 2006. The second citing was the same Section but paragraph #3 which states that if the apartment is to be located in a detached building, it would require a separate septic system.

Chairman Vick announced that Mr. Sager had completed an application and paid the fees to be before the Zoning Board of Appeals. Attorney for the Town, Tal Rappleyea, advised the Board that they were looking at an area variance vs. a use variance. The area variance would be to allow the use of the same septic system, where a use variance would be used for a hotel, for instance. Chairman Vick reviewed the application with the members of the Board.

Mr. Sager answered questions posed by the Board. There would be an additional egress on the 1st floor, the square footage would be less than 800 sq. feet., the downstairs is the same square footage as the upstairs and the only part of downstairs that would be used would be the back part for the egress. Mr. Sager added that the septic system, when designed and installed for the residence was built to be adequate for 5 people. He stated

that there aren't 5 people living in the residence and he felt it would accommodate the additional apartment.

Chairman Vick told Mr. Sager that he had to submit his plans to the Health Department. Mr. Sager replied that he had contacted them and they told him to come to the Town. Mr. Vick explained that the Board would require a new letter of approval from the Columbia County Department of Health after a re-inspection. Chairman Vick asked if there was the possibility of another septic system and Mr. Sager replied there wasn't. Mr. Sager was advised that he would have to return to the Department of Health for approval and the Board would also need floor plans that showed the square footage. Attorney for the Town, Tal Rappleyea, explained that the Dept. of Health dictates the size of the septic system by the number of bedrooms, not bathrooms.

Chairman Vick reviewed with Mr. Sager what additional information he would need and said he could come back to the Board at such time that he had it. Board member Margaret Pino asked that Mr. Sager bring the new letter from the Department of Health.

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Chairman Vick announced that Sal Costanzo had resigned from the Board citing health reasons. He also announced that Steven Montie had been appointed as an Alternate to the Board and would sit in due to the absence of Mr. Costanzo..

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Chairman Vick asked Gerry Ennis to review the situation with the 2nd matter regarding Mr. Serpico, Mr. Pflaum and Mr. Palladino.. Mr. Ennis explained that he had spoken with Mr. Serpico on the telephone regarding Mr. Palladino cutting down trees. Mr. Ennis went and walked the property and reported that it appeared that the trees had fallen down. He stated that he had spoken with the local DEC Officer regarding this matter. The DEC Officer said he had been there twice and hadn't found any issues. Mr. Ennis reported that there had been "official" complaint submitted to the Town. He added that he felt it was a DEC issue. Mr. Ennis said there was no violation issued and that he hadn't received anything in writing until he received the package from Mr. Pflaum.

Chairman Vick asked if there were any permits issued. Mr. Ennis explained that the only permit that had been filed was when the previous owner, Emily Seymour, had applied to the State for a curb cut, in anticipation of ever having a driveway put in on the property. Mr. Ennis reiterated that no violations or permits were issued and all matters were referred to DEC. Chairman Vick asked if there was any decision from DEC and Mr. Ennis replied that DEC had said it was all okay.

Chairman Vick asked Mr. Serpico for an explanation of the situation. Mr. Serpico stated that Mr. Palladino was leveling the property and pushing the dirt up to the ridge. He also stated that his property survey pin had been removed. He said that he had spoken with ZEO Gerry Ennis and that Gerry Ennis had suggested he speak with Mr. Palladino. Mr. Serpico said he had also contacted the original surveyor, Peter VanAlstyne who told him that the pin couldn't be reset in the correct spot because the land had been pushed over

the bank. Mr. Serpico alleges that Mr. Palladino has also removed all of the top soil and has destroyed his (Mr. Serpico's) property. Mr. Serpico went on to allege continued trespassing on the part of Mr. Palladino. Mr. Serpico told the Board that there were flood plain and wetland issues that had to be considered. He also added that DEC had been there to warn Mr. Palladino about burning. Mr. Serpico showed pictures of the area to the Board members.

Kent Keller asked if Mr. Serpico would be willing to work with Mr. Palladino to plant trees and create a berm. Mr. Serpico replied by asking how he would get his land back.

Chairman Vick said that the Board can only operate when there is a violation issued by the Zoning Enforcement Officer, and there wasn't one in this case. He added that the Zoning Board of Appeals has no say or authority on his matter. He suggested a better remedy would be to go to DEC. Mr. Ennis stated that this was the first time he had heard anything about the boundary pin being removed. He added that part of this property was an old gravel pit and that the land does fall easily.

Mr. Pflaum said that the Zoning Board referenced other entities and asked how the Board didn't have authority. Chairman Vick replied that the Board had no authority because there was no application or fee before the Board. He added that the bottom line was that there was no action by the Zoning Enforcement Officer so there is no ruling the Zoning Board of Appeals can make. Mr. Vick also said that Mr. Serpico would be the aggrieved party in this case, not Mr. Pflaum. Mr. Pflaum stated that the Board should read the Zoning Law and that they should consider ruling based on the failure of the ZEO to act.

Special Counsel, William Better, explained that the Zoning Board of Appeals has limited jurisdiction over specific things and that they can only function in an appellate position. He then read from the Town Law. He explained that Mr. Ennis was not charged with the duty of enforcing DEC rules. He also explained that the process was to submit a complaint in writing to the ZEO. The Board could hear the "case" if a denial had been given to a person "of standing". Mr. Better suggested that Mr. Serpico follow up with who is responsible for enforcement of DEC rules.

Mr. Pflaum argued that Gerry Ennis did make a decision on the complaint when he decided not to act. Mr. Better explained "person of standing" to Mr. Pflaum. Mr. Serpico read a section of law with reference to enforcement of moving survey pins. Mr. Better explained that the "other entities" referred to in the statute was the police.

Steven Montie spoke about the fire calls and that the fire company did investigate. He added that the flooding from Hurricane Irene caused water to be all over.

Mr. Better asked if an application or filing fee had been submitted. There wasn't either. Amy Abatti asked for clarification as to why the Board could hear the complaint. Mr. Better explained that since there was no ZEO violation and all the procedures hadn't been followed.

Mr. Pflaum said the Secretary should have told them and Mr. Better replied that this wasn't his first time before the Board and an application and fee shouldn't be a surprise to him.

Chairman Vick made a motion that the situation wasn't in the jurisdiction of the Zoning Board of Appeals and they should therefore take no action. The motion was seconded by Margaret Pino and the Board voted unanimously in favor. The motion was carried.

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Chairman Vick explained that the third issue before the Board was similar to the second in that Mr. Pflaum was asking for an interpretation of the business operation of Knott's Enterprises but that no violation by the ZEO had been issued. There was no application or filing fee either.

Gerry Ennis explained that he had received a complaint about Knott's Enterprises. He researched the history of the file. He said that Ron Knott had appeared before the Planning Board, as a courtesy. His application to the Planning Board was to build a barn to store stuff. Mr. Ennis said you are allowed to build, store and work in barns. Mr. Ennis reported that he had answered Mr. Pflaum's complaint stating that no violations were found.

Chairman asked Mr. Ennis if there had been any violations issued and Mr. Ennis replied there hadn't been.

Mr. Pflaum stated that he had emailed and asked for a form and fee amount and that no one answered him. He said his complaint was that he shouldn't be operating under a home occupation ordinance. The Policy established that work of home occupation must occur at home. He also asked that the Zoning Board reconsider the approval of the Planning Board because there had never been a public hearing.

Mr. Ennis noted that Mr. Knott (Knott's Enterprises) did not have a home occupation permit and that he worked out of his truck. Mr. Pflaum argued that Mr. Knott had gotten one in 2002.

Ron Knott addressed the Board stating that he had appeared before the Planning Board to build a shop to store stuff. Mr. Knott said the site plan included a shop to repair parts and to house materials. He said the Planning Board advised that a Site Plan Review didn't require a Public Hearing. The shop houses equipment.

Mr. Better asked if it was ever sought to be a home occupation and the reply was no. Mr. Better went on to ask Mr. Pflaum how he was an aggrieved person in this matter. He asked how far away from Mr. Knott's shop did Mr. Pflaum live. Mr. Pflaum responded that he is not a neighbor and that he is too far away to hear anything. Mr. Better asked how many miles away and whether he could see or hear anything from Mr. Knott's shop. Mr. Better asked Mr. Pflaum if he had followed the application procedures.

Chairman Vick stated that there was no home occupation permit and that the Board had no jurisdiction in the matter.

Mr. Better added that Mr. Pflaum didn't have standing in this matter, as defined by New York State Law. He advised the Board that Mr. Pflaum had not demonstrated harm by Knott's Enterprises' actions and that Mr. Ennis did respond to Mr. Pflaum with a report of no violation.

Mr. Pflaum argued that he was aggrieved because Mr. Knott was the Town Supervisor. Mr. Better read the NY Case Law to define "aggrieved party" and concluded that Mr. Pflaum had no standing in this matter. Mr. Pflaum argued further that he had standing because of routine corruption of the Zoning Law. Mr. Pflaum added that if the Board would reinstate his home occupation permit that had been taken away in August 2011 all these other matters would go away. Steve Montie commented that this was starting to sound like a vendetta.

Chairman Vick then read a proposed resolution into the record:

**TOWN OF STUYVESANT BOARD OF APPEALS
RESOLUTION
WILLIAM PFLAUM REQUEST**

WHEREAS William Pflaum by letter January 2, 2012, asserted that Ronald and Catherine Knott were conducting a business at Summerset Road in violation of the Town of Stuyvesant Zoning Ordinance; and

WHEREAS Gerald Ennis, Enforcement Office and Zoning Enforcement of the Town of Stuyvesant made a determination dated January 9, 2012, that Mr. Knott, on behalf of Knott's Enterprises appeared before the Planning Board and the building use for the building constructed pursuant to a Planning Board meeting held on August 29, 2002 and as a consequence no violation was issued; and

WHEREAS after said determination that William Pflaum submitted a document entitled, "Petition: Request for Interpretation: To the Zoning Board of Appeals," without a formal application and without the payment of an application fee; and

WHEREAS the Board has reviewed the application and made inquiry of Mr. Pflaum to determine if he was and is an aggrieved person, as required in Section 267 A, B, and C of the Town Law.

NOWHEREFORE it is

RESOLVED that the application be and hereby is denied for the failure on the part of the applicant to pay the application fee, and it is further

RESOLVED that the application is denied for the failure of the applicant to submit an application on the form prescribed by the Town of Stuyvesant; and

RESOLVEED that based on the findings attached hereto, it is determined that the applicant is not an aggrieved party as defined in Section 267, 267A, 267B and 267C of the Town Law and as determined by the various decisions determined by the courts of the State of New York.

A motion made by Margaret Pino and seconded by Steven Montie to adopt the resolution as read by Chairman Vick. Chairman Vick took a roll call vote:

Amy Abatti	No (because she had not had a chance to review cited laws)
Kent Keller	Abstain
Margaret Pino	Yes
Steven Montie	Yes
Jeffrey Jensen	Yes
Paul Harpis	Yes
William Vick	Yes

Chairman Vick determined the motion passed by a vote of 5 Yes, 1 No and 1 Abstain.

Mr. Better reviewed the findings referenced in the resolution:

Findings:

The Zoning Board determines that the applicant, William Pflaum, is not an aggrieved person or party within the meaning of Article 16 of the Town Law, relative to Zoning Boards of Appeals by virtue of the following:

- 1. Mr. Pflaum physically does not reside in close proximity to the property where the building of Ronald and Catherine Knott is located, and it is actually located several miles from Mr. Pflaum's property.*
- 2. The applicant cannot see the offensive building from his residence.*
- 3. The applicant, by virtue of geographical distance, has no idea and does not experience any noise, odor or any other offensive activity, which if such activity occurred wouldn't be experienced by Mr. Pflaum.*

Mr. Better added that Mr. Pflaum suffers no injuries with respect to this matter.

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Chairman Vick announced that there would be training at the Greene County Emergency Services Center on May 23rd. 5-7pm would be Subdivision Review and 7:15-9:15 would be Land Use Tools for Walkable Communities.

A motion to adjourn was made by Steve Montie and was seconded by Paul Harpis. The motion was voted on and was passed unanimously. The meeting adjourned at 8:22pm.

Minutes recorded 3-27-12 by
Melissa A. Naegeli, RMC
Town Clerk