

Minutes of the Zoning Board of Appeals Meeting held by Zoning Board of Appeals of the Town of LaFayette on January 14, 2003 in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette.

Present: Stephen Beggs, Chairman  
Al Miller, Board Member  
Jim Butkus, Board Member  
Dan Kuhns, Board Member

Absent: Bob Drumm, Board Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, Town Attorney  
Sandra Smith, Councilor  
David Knapp, Councilor  
Amelia Priest, Fabius  
Kurt Watson, LaFayette  
Donna Coty, Applicant  
Sean McCarthy, Applicant  
Jean Kapcio, 2079 Deer Run  
John Engelkan, Fabius  
Marilou Murphy, 5849 Winacre Dr.  
Paul Murphy, 5846 Winacre Dr.  
Terri (DePalma) Pfohl, Applicant  
Jim Coty, 6401 Cascade Rd.  
Deborah Shaffer, 5582 Amidon Rd.  
Rhonda Fisher Shute, 2683 Lords Hill  
Mike Miller, 2786 Route 11  
Karen Miller, 2786 Route 11  
Bruce Freund, Box 121, LaFayette  
Larry Allen, Sentinel Hgts. Rd.

Chairman Beggs called the Meeting to Order at 6:40 p.m. He had everyone introduce themselves on the Board and the Town Attorney and Secretary.

Chairman Beggs asked for any corrections or additions to the Special Zoning Board of Appeals Meeting Minutes of December 17, 2002. There were none.

**Member's Butkus moved and Kuhns seconded the motion to accept the Special Meeting Minutes of the Zoning Board of Appeals held December 17, 2002, as submitted by the Secretary. Motion passed unanimously.**

**CASE # 547 – Public Hearing for Appeal of John DePalma for a side-yard variance for his property located at 3142 Sentinel Heights Road approximately ¼ mile south of the Mondore Dr. and Sentinel Heights Rd. intersection in an Agricultural/Residential District.**

Mr. DePalma's daughter Terri Pfohl was present to represent him.

Chairman Beggs reviewed the application. 5 years ago Mr. DePalma got a building permit for a deck. It was inspected on August 18, 1998. The right-of-way was established in 1995.

Mrs. Pfohl said the right-of-way was established in 1996.

Chairman Beggs said the determination was made at the last meeting that the structure was closer than 25 feet to the side property line so a variance is needed. The sunroom on part of the deck was built in 2002. The Board asked the applicant to provide a map showing all the dimensions.

Mrs. Pfohl submitted another survey recertified on December 19, 2002 and prepared by Cottrell.

The Board reviewed the new survey.

Mrs. Pfohl also submitted some new photographs of the sunroom/deck and neighboring property.

Chairman Beggs noted where the septic, drainage field and well were located on the property.

Mrs. Pfohl asked why it was O.K. to get a building permit to put up the deck and sunroom when all the dimensions were noted on the map submitted at that time.

Member Miller said that doesn't matter. Some day if the applicant wants to sell this property, he would have to go through this process as the deck/sunroom are too close. By going through this now, the applicant is done and over with it.

Mrs. Pfohl submitted copies of the building permits.

Chairman Beggs said he was looking to see if there was anything noted in the paperwork that shows or displays what Mr. Lamson might have written down from the site plan location at the time the structure was added.

Mrs. Pfohl said they were up front from the beginning. All the dimensions were written out. They just built it in all honesty. They thought they had approval. If someone had said they couldn't do it, they wouldn't have.

Chairman Beggs asked the Board if they had any questions or comments.

There were none.

Another one of the applicants daughters came forward and said the ramifications to remove the sunroom would be of significant magnitude.

Chairman Beggs asked if there was anyone in attendance that wished to speak in support of the application.

No one came forward.

Chairman Beggs asked if there was anyone in attendance that wished to speak in opposition to the application.

Mr. Allen came forward and introduced himself as the applicant's neighbor. He gave them a right-of-way to the driveway in 1996 which stipulated there would be no construction. No sooner did he give them the right-of-way and this was built. He investigated and found the paperwork they submitted showed the deck on the other side of the house.

Chairman Beggs would like to see the paperwork Mr. Allen has.

Mr. Allen submitted his copies.

Chairman Beggs said this Board may have to hold this public hearing over to the next Zoning Board of Appeals Meeting as we need to get documentation from Mr. Lamson.

Mr. Allen submitted a 1987 survey. He also submitted one from 1995 when he gave them the permit for the driveway. When he gave them the right-of-way, that is what he didn't want was someone to be able to build any closer. He submitted the paperwork from Attorney Perrin regarding the right-of-way. It was an understanding when the easement was given that they would not be allowed to build within 25 foot of it. The easement was granted to allow them access to the garage.

Member Butkus asked Mr. Allen why he granted them the right-of-way.

Mr. Allen said it's been in his family for years. When he finally got the land from his father, Mr. DePalma asked and asked for an easement and he finally gave it to him.

Mr. Langey said unless there is a covenant that Mr. DePalma agrees not to build on his own land then he doesn't see anything in writing.

Mrs. Pfohl submitted a survey from 1987.

Member Kuhns asked if the garage had been there a long time.

Mrs. Pfohl said Mr. Allen, Sr. built it for them. It was always an agreement that they had a right-of-way to it.

Member Kuhns asked if the driveway was always there.

Mrs. Pfohl said yes. When the son took over the property is when the problem started.

Chairman Beggs thinks this Board will have to get Mr. Lamson to supply the records he has regarding the issuance of the permits and submit them to the clerk to distribute copies to this Board so they have a chance to review the case before the next meeting. Trying to sort all the things out tonight without knowing the background makes it difficult for this Board to make a decision that might not be of the best interest to all parties. He asked Mrs. Pfohl and Mr. Allen to give their documentation to Mary Jo so she can make copies and distribute them to the Board Members.

**Member's Miller moved and Kuhns seconded the motion to continue the public hearing for this application on February 11, 2003.**

Chairman Beggs asked Mary Jo to get what Mr. Lamson has regarding this case and make copies for this Board so they can review everything before the next meeting and come prepared to make a decision.

**CASE #548 – Public hearing for Appeal of Donna Coty for a Specific Permit for property located at 2471 Route 11 south approximately 1/8 mile south of the Route 20 and Route 11 intersection on the west side of the road in a Hamlet District.**

Ms. Coty said at the meeting on December 2<sup>nd</sup>, the Board had several items they wanted her to investigate and find out. The first thing was the location of the septic system and the well. She submitted a drawing of where they are located on the property. The septic is located 15' west of the northwest corner of the building. The well is on the northwest corner. The parking lot expansion will not interfere with either of these. Mr. Northrup came and investigated and said the leach field runs west. She talked to an engineer at the N.Y.S. D.O.T. at length to have him come out and look at the parking and get any recommendations so she could get back to this Board with them. He advised he would not be out for 6-12 weeks as he is busy with Destiny. She sent a drawing to him and followed up with a phone call. He advised, again, he makes no promises as to when he can come out. She has not heard back from him. She has done everything she can do to contact them. She doesn't think the parking is hazardous or dangerous now. She

would agree not to make any changes to the parking until she gets approval from the NYS D.O.T.

Member Butkus asked if the Caldwell Banker sign will stay.

Ms. Coty said Mr. Knapp will be there for awhile and they agreed it could stay until he leaves. She will be attaching her sign to the building.

Chairman Beggs said the Caldwell Banker sign is existing and will stay as long as Mr. Knapp operates out of the building.

Ms. Coty said exactly.

Chairman Beggs would say in generality, when the Caldwell Banker sign comes down and if she would like to put her sign there, she would have to come back to this Board.

Ms. Coty said she isn't sure she would like to put a sign there as the space is so small.

Mr. Langey reviewed the Ordinance and believes the Caldwell Banker sign would be O.K. as well as the sign she is proposing to attach to the building.

Member Butkus asked the width of the building.

Ms. Coty said approximately 39' x 9' x 16'.

Member Butkus asked the approximate depth of the building.

Ms. Coty said approximately 80'.

Member Miller asked what they are proposing for the depth of the parking lot.

Ms. Coty said it would not go past the southwest corner of the building.

Member Miller asked her to supply the exact measurements when the N.Y.S. D.O.T. engineer comes out.

Chairman Beggs said it would have roughly 10 parking spaces.

Ms. Coty said yes.

Chairman Beggs asked if this parking lot would be just for her business or would the real estate business also use this.

Ms. Coty said the real estate would possibly use it. There is on-street parking of about 4 spots which is where people usually park now. There usually isn't much parking in the existing lot now. Sometimes customers from the Old Tymes Café use it.

Mr. Langey said the Town of LaFayette Planning Board reviewed this application and unanimously supported it. They felt this was appropriate for the Hamlet District. A referral was sent to County Planning on this. Tonight they voted on this and voted to approve it with 2 conditions: 1) The application would at some point receive and meet the requirements of the N.Y.S. D.O.T. regarding access to Route 11, and 2) Any parking established would not be erected in the state right-of-way which she wouldn't be able to do anyway. It was a favorable determination from County Planning.

Chairman Beggs asked if there was anyone present who wished to speak in favor of the application.

Mr. Freund said it gives him a great deal of pleasure to come to a Meeting and speak in favor of something. He is very much in favor of Dr. Coty's application and he urges the Board to approve it.

Mrs. Murphy said she and her husband came to speak in support of this application. Her whole family goes to Dr. Coty. She believes this is an ideal business to have in the center of the Hamlet District.

Chairman Beggs asked if there was anyone else who wished to speak in support of the application.

No one came forward.

Chairman Beggs asked if there was anyone present who wished to speak in opposition to this application.

No one came forward.

Chairman Beggs closed the public hearing. He said before this Board tonight conditions of parking and access to Route 11 have not yet been complied with by the applicant, however, the applicant has provided supporting documents that she has tried to contact the N.Y.S.D.O.T. but they haven't found time to make recommendations for the small business. He asked if the Board had any questions or wanted to bring up any points at this time.

There were none.

Chairman Beggs said it's his personal feeling as Chairman that the applicant has met the burden of proof. She is attempting to meet the safety requirements of the Town. He talked to counsel before the meeting and he suggests if the Board decides to approve this application, they make a condition of meeting the requirements of the N.Y.S.D.O.T. This would fall in line with County Planning. The applicant is under a lot of stress to get things rolling. Normally this Board doesn't approve applications without the blessings of all the parameters of the various agencies it has been referred to but in this case, if the Board does approve the application, it would request that the applicant would meet the parameters of the recommendations of the N.Y.S.D.O.T. regarding safety and parking, etc. If she has any problems with the recommendations from the D.O.T., she would have to come back before this Board.

**Member's Butkus moved and Miller seconded the motion to declare the Board lead agency, it is an unlisted action, negative declaration and to grant Ms. Coty a Specific Permit for property located at 2471 Route 11 south in the Hamlet District with the following conditions:**

- 1) **The applicant meet the requirements of the N.Y.S.D.O.T. regarding access to Route 11.**
- 2) **Any parking established would not be erected in the state right-of-way.**
- 3) **Payment of all Developer Deposit and fees.**

**Motion passed unanimously.**

### **Sean McCarthy – Zoning interpretation request.**

Mr. McCarthy was present for a zoning interpretation. He went to the Planning Board in December in regards to building a pole barn across the road from his existing place on Route 11A. He wants to put a cider press in it.

Chairman Beggs asked where the apples would come from to make the apple cider.

Mr. McCarthy said from his own orchard.

Chairman Beggs said Mr. McCarthy would be marketing his own apples. His opinion is apple orchards are a type of farming. A farm is allowed to market its products.

He is going to sell strictly what's grown on his own property. He must show adequate parking and traffic control for the business. This Board would request if there's any waste disposal from the facility it be included in the plan and meet whatever approvals are necessary.

Mr. McCarthy said there's parking all along the store front.

Mr. Miller asked if he is going to sell from the pole barn.

Mr. McCarthy said for the first or second year he will just press the cider there and bring it across Route 11 to sell from the store. He might bring people to the pole barn to watch him press the apples but they would have to go back across the road to purchase it. In the future he would like to be able to sell from the barn. He will leave all the parking in front of the store. There's 500' in front of his house too. There would be no parking on the road at all.

Chairman Beggs asked about waste disposal from the barn.

Mr. McCarthy said he will have a leach field to dispose of the water.

Chairman Beggs said he believes this would require D.E.C. or County Health Dept. approval.

Mr. Langey said the County Health Dept. would have to approve it. He isn't sure about the D.E.C.

Chairman Beggs said in view of the fact the gentleman isn't importing apples and is only pressing what he's grown on his own farm, it would seem to him it would make sense.

Member Butkus asked Mr. McCarthy to confirm in the future this pole barn would not turn into a country store.

Mr. McCarthy said he might sell apple products from there. There might be maple syrup sold there. It would all be stuff produced on his farm. This is only open 3 months out of the year and would not stay open year-round. If it were ever going to turn into a store, he would come back to the Board for approval. This is not going to be a craft store.

Mr. Langey said the reason there was concern about this was if it were to become more of a business than a farm operation. Mr. McCarthy is stating right now he is just making this incidental to the apple farm. He will not have a big parking situation here with hayrides, etc. If the Board is concerned about parking, a driveway permit could be obtained.

Chairman Beggs said there is a store on one side of the road and a press will be across the road. There must be some safe and controlled way for the public to cross Route 11A.

Mr. Langey asked the Board what Mr. McCarthy will need. He doesn't know if Mr. McCarthy needs a specific permit or to just tell Mr. Lamson the Board is O.K. with this as it's an extension of the apple farm. If Mr. McCarthy sets up a shop over there, he will need to come back for approval. If at any point Mr. McCarthy changes his mind and chooses to sell from the pole barn where the press is, he will need to come back in for approval and submit the hours of operation, parking, etc.

Chairman Beggs said in his mind if Mr. McCarthy wants to sell what he already grows and sell it from the existing store, he has a right to process what he grows. He believes the key thing here is he will have to have Health Dept. approval.

Mr. McCarthy said he puts a port-a-john there during the months they are open for the customers to use.

Mr. Langey doesn't know if approvals are required for this or not. If Mr. McCarthy comes back in the future, he will need an updated survey showing where the building is, etc.

Mr. McCarthy said O.K.

Mr. Langey said at this time, the Zoning Board of Appeals interprets this as farming.

Member Kuhns asked what kind of pole barn he plans on putting up.

Mr. McCarthy said wood posts with metal sides. The press would all be electric.

**Sketch Plan Conference for Kurt Watson seeking a side-yard variance on his property located at 2778 Route 11 North in a Business District.**

Mr. Watson and his attorney were present. The attorney submitted an application to the Board. He has Gus Christopherson currently working on the map.

Chairman Beggs would ask them to get their material to Mary Jo as soon as possible so she can send it on to the Board to review before the next meeting.

Mr. Langey said they are here for a side-yard variance because of the location of the greenhouse. The lot which use to be owned by Mr. Watson was sold to the Oots. The Oots brought it to Mr. Lamson's attention that the greenhouse might be too close. The Planning Board approved a subdivision a year or so ago.

Mr. Watson said it's about 15' from the side property line.

Mr. Langey said until the applicant gets a survey, we don't actually know. The applicant roughly needs 10' to be conforming. It was non-conforming when it came before the Planning Board but it was missed. Another time there was a discussion about taking this lot and sectioning off a piece in the back. The problem was it would be less than 60,000 square feet. It would have required a variance to do it. A record check was run through the county taxing authority. At some time, Mrs. Oot purchased 37,000 square feet. This land may have never been transferred. If it did get transferred, a variance is needed for one piece as it's non-conforming and Mr. Watson would need to have one piece attached to his piece in the subdivision. The only thing he wouldn't need any longer is this variance. We won't know the answers to this until we have a current survey.

Member Butkus said he would request that relative to what's going on here, were those buildings permitted to be built? How did this building end up too close to the property line.

Mr. Watson said at the time the greenhouse was erected, Mr. Lamson didn't think there was a problem as Mr. Watson owned both pieces of property.

Chairman Beggs said O.K. At the time of the building permit, Mr. Watson owned both pieces of property and now he has sold one of the lots which makes the greenhouse non-conforming.

Mr. Langey said the lot which is less than 60,000 square feet is pre-existing.

Chairman Beggs believes when that lot was established, the requirements may have been 40,000 square feet which would allow it to grandfather in. If it was less than the 40,000 square feet, the owner must come before this Board for relief.

Mr. Watson's attorney said the first thing they must do is verify the lots.

Mr. Langey said Gus Christopherson is probably familiar with this and can look into it for him. As Chairman Beggs mentioned, it would be good to get this information as far in advance as possible before the next meeting so the Board can review it. The resolution that passed this map said it must be filed within 6 months. If they find it wasn't filed, they will have to go back to the Planning Board for re-approval. He would recommend things get worked out with this Board first.

Chairman Beggs believes since this involves a subdivision they did or didn't get approved by the Planning Board, he would recommend this be referred back to the Planning Board for their input.

Member Butkus asked what the survey map showed when the other property was purchased.

Mr. Watson said he has the survey map from when he sold it.

Chairman Beggs said the more documentation we have, the easier it will be to make a decision.

Mr. Langey said this Board will have to get some measurements.

Member Butkus suggested if the two owners can get together, they might be able to figure something out to bring everything into compliance.

Chairman Beggs said it's a possibility. The first thing this Board needs is an updated survey so it has something to work with. This Board will ultimately, in the process, refer it to the Town Planning Board. This will have to be sent to County Planning once all the documentation is completed.

Mr. Watson's attorney asked how many maps they would like.

Mr. Langey said at least 5 at this time. He suggested to ask Gus Christopherson to be sure he is familiar with the town regulations.

Mr. Watson's attorney will fax him the setback requirements.

Chairman Beggs said until this Board has some facts, the best they can do is offer guidance.

Mr. Langey said he will send a letter to Crown Atlantic regarding the towers stating they are out of the picture at this time.

Chairman Beggs said in an AR District the Zoning Ordinance reads 30' rear setback and 25' side-yard setback. In the definition, it reads "Rear Yard....Accessory structures shall not be permitted in a rear yard closer to a rear or side line than 20 feet".

Mr. Langey said there is a conflict in the Ordinance.

Chairman Beggs asked counsel to look into it and get clarification for it.

Mr. Langey would possibly recommend the Town Board make an amendment to clear up the Ordinance.

Mr. Langey wanted to thank Member Butkus. He certainly recognizes his talents and it has been great working with him.

Member Butkus said 18 years is long enough.

The entire Board agreed and thanked Member Butkus for his years of service and expertise.

**Member's Miller moved and Butkus seconded the motion to adjourn.  
Motion passed unanimously.**

The Zoning Board of Appeals Meeting adjourned at 9:08 p.m.

Respectfully submitted,

Mary Jo Kelly  
Secretary