

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

Present: Stephen Beggs, Chairman  
Albert Miller, Board Member  
Dan Kuhns, Board Member

Absent: Robert Drumm, Board Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, Town Attorney  
Kurt Watson, Route 11 (Applicant)  
Joe Bartolotta, Attorney for Kurt Watson  
Ms. DePalma, Representing Applicant  
Rosemarie Drummond, Apulia Rd.  
Dave Knapp, Councilman  
Sandra Smith, Councilwoman  
Bob Tennant, Sentinel Hgts.  
Dorothy Tennant, Sentinel Hgts.  
Phoenix Corp of CNY  
Andrea Leimannis, 2831 LaFayette Rd.  
Carol Oot, Sentinel Hts.  
Greg Watson, Rte. 11  
Brian & Sandra Skeval, Rte. 20  
Mary O'Connor, 2782 Route 11  
Ralph Lamson, CEO  
Mr. & Mrs. Allen, Sentinel Hgts. Rd.

Chairman Beggs called the meeting to order at 7:31 p.m. Everyone introduced themselves.

Chairman Beggs asked if the Board had reviewed the minutes from the January meeting. He asked for any corrections or additions. There were none.

**Member's Miller moved and Kuhns seconded the motion to accept the January Zoning Board of Appeals Meeting Minutes as submitted by the secretary. Motion passed unanimously.**

**CASE # 547 – Continuation of 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 daughters were present to represent their father (the applicant). Rose reviewed the standards of approval for a variance. Is it an undesirable change? No, it's an improvement. A deck existed prior to the sunroom being built. Can

the results be achieved by another method? No, it can not. They applied for Building Permits, were issued Building Permits and a Certificate of Occupancy. Is the area variance substantial? In light of the area, it's not substantial. Will it create a negative environmental impact? Definitely not. It was not a self-created difficulty. It was built in good faith. They were issued Building Permits and a Certificate of Occupancy.

Chairman Beggs asked if they are looking for a 6' side-yard variance.

Rose said yes.

Chairman Beggs believes they previously submitted copies of the Building Permits for the structure and those kinds of things which the Board has record of. He believes the problem arose when the Code Enforcement Officer interpreted that the right-of-way was part of this property and issued the Building Permit believing the structure would not be too close to the property line. Since that time, it has been determined that the right-of-way is not part of the applicant's deeded property and therefore the structure doesn't go along with the building code.

Ralph Lamson said that is right. It is not a right-of-way on their property as he thought. It's a right-of-way to their property.

Chairman Beggs said the deck is wider than the right-of-way so even if the right-of-way were there, it's still in violation as far as the distance from the structure to the property line.

Rose said with all due respect, Mr. Lamson was given the drawings and survey prior to issuing the Building Permits and the Certificate of Occupancy. It would cost about \$40,000 to move this structure.

Chairman Beggs asked if there was anyone present to speak in support of the applicant.

Carol Oot said she is in support of it. She believes when you receive a Building Permit, you have every right to think you have the go ahead and she doesn't think this could possibly hurt anyone.

Chairman Beggs asked for any other comments in support of the application. There were none.

Chairman Beggs asked for anyone in opposition.

Larry Allen doesn't believe you should even apply for a Building Permit when you don't have room enough. He wouldn't have granted the right-of-way if he'd known they were going to build this.

Chairman Beggs asked when the right-of-way was established.

Mr. Allen said before the deck was built.

Ms. DePalma said they have pictures from the 1960's showing the driveway existed and they have pictures from the 1974 Yearbook showing the driveway. They also have pictures from when she was 6 months old showing the driveway.

Mr. Allen said showing his driveway.

Ms. DePalma asked why Mr. Allen would grant them a right-of-way if one shouldn't be given?

Chairman Beggs said concept-wise, the structure is built on the applicant's property. It's not constructed on the right-of-way. The right-of-way is something that this Board cannot be concerned about.

John Langey said that is correct. It's a private matter.

Chairman Beggs asked if there was anyone else in opposition to this application. No one came forward.

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

Member Kuhns asked Mr. Allen how the existing structure adversely affects him.

Mr. Allen said he never would have granted access to the driveway if he'd known they were going to build this. He put no construction or building, etc. in the right-of-way agreement. Why would you build a deck 15' from the garage when you know you don't have the room? He is opposed to this. If they keep the driveway and sunroom the way they have it, then where are his rights? He could forge the documents and go to Ralph and get a Building Permit to build closer to their line than he should. Someone forged the documents they brought to Ralph.

Member Miller asked Ralph if he determined that the right-of-way was part of the property.

Ralph said yes.

Member Miller asked if there was any confusion as to where the deck was.

Ralph said no.

Chairman Beggs asked for any further input. There was none.

Chairman Beggs asked the Board for any further comments or questions. There were none.

Chairman Beggs closed the public hearing. He said the case before the Board is the structure is built on the property. There is a lot of conversation about the right-of-way which this Board has nothing to do with. Obviously there was a mistake made on the interpretation. Those are basically the facts before us tonight. The structure is 6' closer to the property line than code allows. He asked John Langey if he had anything to offer.

John said the applicant addressed all the criteria in the statute for granting variances. The Board can take that into consideration as well as the comments from the public.

Chairman Beggs asked for any further comments or thoughts from the Board.

Member Kuhns said removing the structure does cause a significant hardship to the DePalma's and he didn't feel Mr. Allen really answered his question on how this adversely affected him.

**Member's Miller moved and Kuhns seconded the motion to make this Board Lead Agent, this is an unlisted action and a negative declaration on the SEQR review and to grant a 6' variance to the DePalma's to bring the structure into compliance with the Zoning Ordinance of the Town of LaFayette. Motion passed unanimously.**

**CASE # 549 – Public Hearing for appeal of Kurt Watson for a side-yard variance on his property located at 2778 Route 11 on the east side of Route 11 approximately 1.1 miles north of the Route 20 and Route 11 intersection in a Business District.**

Joe Bartolotta was present to represent the applicant. He submitted a map prepared by Christopherson Land Surveying dated 6/18/01 and revised 2/14/03. The map shows the proposed and existing greenhouses. The 10' and 12' distances from the

property line are also indicated. The existing greenhouse is 12' and the proposed greenhouse would be 10' from the property line.

Chairman Beggs said this would be a request for a 15' side-yard variance.

Joe said the state law uses 5 criteria to determine variances. He had submitted correspondence regarding the analysis of these 5 criteria.

Chairman Beggs said the applicant has heating in the floor of the existing greenhouse. The Board had wondered if the existing greenhouse could be rotated 90 degrees to bring it into compliance but because of the heated floor, that is not possible.

Member Kuhns asked if there is a foundation for the proposed greenhouse.

Joe said it shares the side posts with the existing one. The adjacent property owner sharing this boundary has submitted a letter stating she has no problem with the structure being that close to the property line.

Mary O'Conner was present and said it will be 10' instead of 25' which is O.K. with her.

Chairman Beggs said in the variance it will state they are looking to put the structure closer to the property line than 25' so we would specify the amount of the variance. If they needed 10', the language we would use would be a 15' side-yard variance.

John said when he writes the resolution, he actually says what the Board grants. He might say they grant 15' variance, state exactly where the structure will be built and reference the survey filed so there is no question as to where the structure will be.

Chairman Beggs believes there was question as to why the structure was built as close to the property line as it was. He believes at the time the structure was built, the applicant owned both the properties. The case in point here is if a property owner has two separate tax parcels then the setbacks from the property lines have to meet code.

Ralph said this was a past practice that has been done away with. It used to be that the property line was ignored when the person owned both the parcels. This was probably done away with 4-5 years ago as they realized it didn't work. The tax assessors used to just use the entire boundary for the parcels so they said we didn't need to worry about it. We have since found out that is not true.

Chairman Beggs said it's a good practice to follow that even if someone owns both pieces of property, if they are separate tax parcels, they must meet code. If it were one parcel, it would be O.K. If they choose to subdivide down the road, they will have to follow all the subdivision regulations.

Chairman Beggs asked if there was anyone present in support of this application.

Brian Skeval said he would support it. He's done the same thing before. Everything isn't always the way you would like to have it. Sometimes you have to change things a little bit.

Bob Tennant was present to support this application. He feels the applicant runs a good business and is in a Business District. He thinks the Board should support it.

Chairman Beggs asked if there were any other comments in support of this application. There were none.

Chairman Beggs asked if there was anyone who would like to speak in opposition to this.

Carol Oot asked if there were Building Permits for these greenhouses.

Ralph said the ones up there now have Building Permits for them.

Carol said she made the complaint about this last April and nothing was done. Kurt had come to the Board to try to get a parcel removed from the home parcel and the town denied it. Watson Greenhouse was denied a variance for a 5' side-yard which was really a mistake. Everyone should be treated fairly.

Chairman Beggs asked for any other comments in opposition. There were none. He asked the Board if they had any questions or comments. There were none.

Chairman Beggs closed the public hearing. He said basically what this Board has before it here tonight is the fact that this Building Permit was issued because the owner was the same for both this property and the neighboring property at that time and as we have seen in the past, when people come to subdivide or whatever, the people must comply with the setbacks of the property lines. This wasn't observed at that time. The structure is here. We have a letter from the adjacent property owner stating her position on it which is that she has no problem with it. Those are the facts before this Board. Something that would be well for this Board to put in the language of the resolution if it were approved is a screening fence to keep it separate from the neighboring property owner. We have done that before with things so it provides a privacy area.

Member Kuhns said and to help with the possibility of the amount of light that comes from the property at night.

Member Miller asked if they would suggest a fence or a screening of vegetation.

Kurt said he already has a fence there.

Chairman Beggs said there should be something to provide privacy from lighting, visibility, etc. so the adjacent property owner isn't plagued with things that go on there. He asked since there is an area variance for this, is a SEQR required?

John said yes and the applicant has submitted one. He asked the Board for specifics on the screening for the resolution.

Chairman Beggs said this Board feels the screening should provide privacy to the neighboring property owner on the north from any business activities that take place in the greenhouse structures since they are closer to the property line than the normal setback. It's hard for this Board to say what's going to be there in 2-3 years but the applicant shall have the responsibility of maintaining and building a structure that is agreeable to both parties. He doesn't believe this Board can say what kind of structure that screening has to be. He thinks this is better left up to the applicant and the neighboring property owner. They will have to agree on this.

**Member's Kuhns moved and Miller seconded the motion to make this Board Lead Agent, this is an unlisted action and a negative declaration for SEQR and as the requested variance will not produce an undesirable change in the character of the neighborhood, the benefit cannot be achieved by another feasible method, it is not a substantial request, will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district and it's not a self-created hardship, to grant in accordance with the noted 'existing greenhouse' on the map prepared by Christopherson Land Surveying dated 6/18/01 and revised 2/4/03 a variance to go no closer than 12' and for the greenhouse noted on the map as the 'proposed greenhouse' a variance to go no closer than 10' to the northern property border with the following conditions:**

- 1) **Screening shall be placed along the northern border of the property to provide the neighbor with privacy from the business.**
- 2) **Payment of all fees required.**

**Motion passed unanimously.**

**SKETCH PLAN CONFERENCE – Brian and Sandra Skeval for a side-yard variance for property located at 5982 Route 20.**

Brian showed the Board an old survey and sketch of the 2 properties involved. He explained that he would like to move the property line a little and discussed the possibility of an addition to his garage.

Chairman Beggs asked if it's 2 separate tax parcels.

Brian said yes.

Sandra said if they move the line to keep within the 25' for the addition to the garage, it leaves very little property between their property line and the house next door. They would be very close to the septic if they put the addition to the garage in a different direction than what they are proposing.

Chairman Beggs said the Board would recommend when they come in for their formal application, to have a complete survey showing what the parcels actually are. When they get the survey done, the new survey should show all the correct dimensions.

Sandra said if they have a new survey done, they would like the line moved on it.

Chairman Beggs said re-establishing lines must get subdivision approval. He doesn't believe this Board has the authority to do that.

John Langey said that is correct. They would have to go before the Planning Board.

Brian said they are going before that Board next week.

Member Miller would feel more comfortable if there were 10' to 12' separation so a vehicle could pass through between the property line and the house.

Chairman Beggs said there has to be a distance that your septic is from the property line.

Ralph said there is some distance required between the well and the septic but he doesn't know about the distance from property lines as the County Health Dept. inspects those.

Chairman Beggs had some work done this summer on his septic system and he thinks you must stay a certain distance from the property line.

John said the County Health Dept. could advise them on this.

Sandra asked if the Planning Board approves them moving the line, they should aim for 10'.

Chairman Beggs would recommend this.

Sandra said they need to find out the actual distance for the septic system too.

Ralph said to call the County Health Dept.

Brian asked if there has to be a distance between the driveways.

Ralph said no.

Chairman Beggs said this Board would like to see the whole thing put together and planned so their next meeting with this Board could be the final sketch plan and the following month they could hold the public hearing.

Sandra asked if they need the survey done first.

Chairman Beggs said this Board can work with the Planning Board's input and the input of the County Health Dept. This Board is looking for the most clearance from the boundaries. The perfect amount would be 25' for either property. They try to get as close to that as possible and now is the time to do it when they are re-establishing the property line.

Chairman Beggs asked for anything else for this Board tonight. There was nothing.

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

The Zoning Board of Appeals Meeting adjourned at 8:39 p.m.

Respectfully submitted,

Mary Jo Kelly  
Secretary