

Minutes of the Town of LaFayette Zoning Board of Appeals Meeting held in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette on August 12, 2003, at 7:30 p.m.

Present: Stephen Beggs, Chairman  
Robert Drumm, Member  
Jerry Doolittle, Member

Absent: Albert Miller, Member  
Daniel Kuhn, Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, ZBA Attorney  
John Doupe, Applicant  
Timothy Gernhardt, Applicant

Chairman Beggs called the meeting to order at 7:34 p.m. Everyone introduced themselves.

Chairman Beggs said there are no formal public hearings tonight, however, there are 3 cases before the Board. He asked for any corrections or additions to the July 8, 2003 Minutes. There were none.

**Member's Drumm moved and Doolittle seconded the motion to accept the July 8, 2003, Zoning Board of Appeals Meeting Minutes as submitted by the Secretary. Motion passed unanimously.**

**CASE # 557 – Sketch Plan Conference for appeal of John & Delphine Doupe for a variance of their property located at 1717 Apulia Rd. approximately 1.5 miles south of the Route 20 and Apulia Rd. intersection in an Agricultural/Residential District.**

John Doupe said he didn't know he couldn't replace a mobile home with another mobile home. It's approximately the same size in floor space but different in layout. He was advised he couldn't swap mobile homes.

Chairman Beggs said there are areas in the town zoned for mobile homes. Trailers are allowed in areas zoned for mobile homes or on farms for hired hands. Other than that, mobile homes out of these areas are non-conforming. Trailers located in areas not zoned for them cannot be upgraded or replaced. He asked the purpose of this mobile home.

John Doupe said his sister-in-law lives there. She trains and works with the horses. Their living doesn't derive from the horses. She works 2 to 3 days a week at Wal-Mart. Right now, she is living with them.

Member Drumm asked if the old trailer is gone.

John Doupe said no. He can put it back and get rid of the new one but the new one has better windows and walls.

Chairman Beggs asked how long it has been since the old trailer was inhabited.

John Doupe said since about March.

Chairman Beggs asked if the square footage of floor space is about the same.

John said yes. It's pretty close. The old trailer was 12' x 70' and the new one is 14' x 70'.

Chairman Beggs noted the old trailer was 960 square feet and the new trailer is 980 square feet.

Member Drumm said the law is very specific on mobile homes.

Chairman Beggs said the trailer has basically been there since the mid 1960's. The actual trailer was grandfathered. He asked what the situation is for the well and septic at the trailer.

John said it works off the house well and has its own septic system.

Member Drumm asked if she made more than ½ her living from raising the horses.

John said no. She gets to live in the trailer for free.

Chairman Beggs asked if that parcel is a separate deeded parcel.

John said no. One side of the road is one tax parcel and the other side of the road is another tax parcel.

Chairman Beggs said we have two residents on one tax deeded parcel which is one issue we have to consider. The other issue is the fact that the applicant wishes to replace an existing trailer that is non-conforming with another non-conforming use.

The Board discussed a non-conforming use.

John Langey said this might be caught up in the moratorium right now on non-conforming uses.

John Doupe said it was all one parcel when they bought it. A few years ago tax mapping separated the parcels one on one side of the road and the other on the other side of the road.

Chairman Beggs said the applicant also has two residents on one parcel.

John Langey said that issue might be caught up in the moratorium too.

Chairman Beggs said if the trailer were replaced with a modular house, it would be allowed in an Agricultural/Residential District. One option might be to replace the trailer with a modular home.

John Doupe said that would have to be a last resort for him as it would be a lot of money.

Chairman Beggs said he is just trying to look at all the different avenues. With the moratorium going on, this Board's hands are tied right now. It doesn't fall under the classification of hired help where it could be an agricultural trailer so he is trying to look for ways to make this possible.

Member Drum said the bad thing about it is it's all on precedent. If you give it to one, you have to give it to everyone and there's no sense in having the law.

John Langey said if you allow for an expansion of a non-conforming use, you are authorizing a prohibited use.

Member Doolittle said the modular home would not be able to be on the same tax parcel.

Chairman Beggs said that is correct.

Member Drumm said John might want to put the old trailer back because if it is abandoned for 6 months, it's illegal. He said he would have loved to put a trailer up on his property for his mother but zoning wouldn't allow it.

John Langey said most other towns don't allow any expansions of non-conforming uses. He believes Member Drumm's advice to get the trailer back in place before the 6 months goes by is good advice. He would recommend John talk to Ralph about the 6 months.

Chairman Beggs said if it is a different tax parcel on the other side of the road, the applicant has two parcels and could place a modular on the other property. He said the two issues are two residents on one tax parcel and one dwelling is a mobile home. John is lucky enough to have two tax parcels so a structure could be put on the other parcel.

Member Drumm said to do that, he would have to put in a new well and septic system.

Chairman Beggs said the other thing he could do is subdivide the property they are on now.

Member Doolittle asked when Ralph reported this.

John Doupe said 6 to 7 weeks ago.

Chairman Beggs said the other issue that arises is that if the applicant puts the old trailer back, you have two residents on one tax parcel.

John Langey would assume that would also be recognized as a non-conforming use.

Chairman Beggs said if John Doupe were to come back to this Board for a public hearing on this application, this Board could not authorize replacement of this unit right now or authorize to residents on one parcel.

John Langey said it is illegal today but he doesn't now if it was illegal when the trailer was first put on the property. If it wasn't, it was a legal non-conforming use. As long as someone didn't stop living there for more than 6 months, it would remain a non-conforming use.

This will not be scheduled for a public hearing next month.

**CASE # 558 – Sketch Plan Conference for appeal of Christopher Fleet for a side-yard variance on his property located at 4132 Route 91 on the east side of Route 91 approximately 1.1 miles south of the Route 91 and Route 173 intersection in an Agricultural/Residential District.**

Mary Jo said the applicant called earlier today and wishes to withdraw his application. He doesn't believe he will require a variance now.

**CASE # 559 – Sketch Plan Conference for appeal of Timothy Gernhardt for a use variance on his property at 2581 Webb Road on the west side of the road approximately ¼ mile north of the Route 20 and Webb Rd. intersection in an Agricultural/Residential District.**

Timothy Gernhardt said apparently this used to be a small ice shed off the barn. It was an apartment quite a long time ago and then his father used it for a gallery for his artwork. Timothy and a friend worked on it last fall and converted it back into an apartment.

Chairman Beggs said the problem facing the applicant is that he has two residents on one tax parcel which would mean multiple family on a single-family parcel.

Member Drumm said this is an Agricultural/Residential District.

Chairman Beggs said to get a multiple family use in an Agricultural/Residential District the applicant would be looking to get a use variance. To allow use not otherwise allowed within zoning, an applicant must demonstrate to the Board necessary hardship such as:

- 1) can not realize a reasonable return – substantial as shown by competent financial evidence;
- 2) alleged hardship is unique and does not apply to substantial portion of district or neighborhood;
- 3) requested variance will not alter essential character of the neighborhood;
- 4) alleged hardship has not been self-created.

These are a summary of what's required for a use variance. This is possibly the most difficult variance to get in New York State. There are no apartments allowed in an Agricultural/Residential District. To get a legal apartment house it must meet the parameters of a multiple family which his area does not happen to be zoned as. He said he is sorry.

Member Drumm said this is a self-created hardship.

Member Doolittle said it violates every one of the conditions.

Timothy Gernhardt said he didn't understand.

Member Drumm said the applicant said he fixed the apartment up last fall which is a self-created hardship. The applicant didn't know the zoning regulations at the time, but he should have checked into them before creating the apartment.

Timothy Gernhardt asked if this meant he couldn't have an apartment there.

Chairman Beggs said in the interpretation of the ordinance they have to work with, he doesn't see any way this is reasonably allowable. He said he hates to bring the applicant this news. He explained the purpose of this Board is to grant relief to applicants requesting to do something that goes against the zoning rules.

Timothy Gernhardt asked where he goes from here. How much time can he give the tenants to move out?

John Langey would suggest he talk to Ralph Lamson and let him know he came before this Board and see what time-frame he will give.

Chairman Beggs recommended he speak with Ralph about this. If he had a large enough parcel of land, maybe he could subdivide and make this a separate parcel.

Timothy Gernhardt said he doesn't have enough land.

**Member's Drumm moved and Doolittle seconded the motion to adjourn. Motion passed unanimously.**

The Zoning Board of Appeals Meeting adjourned at 8:35 p.m.

Respectfully submitted,

Mary Jo Kelly  
Secretary