

Minutes of the Zoning Board of Appeals of the Town of LaFayette held May 11, 2004 at 7:30 p.m. in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette.

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

Absent: Albert Miller, Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, ZBA Attorney
Ralph Lamson, CEO
Robert & Gwen Haight, Applicants
Russell Burlingame, Applicant
Jason Griffin, Applicant
Stacie & Aaron Stroup, 3239 Webb Rd.
Shawn & Mary Adam, 3273 Webb Rd.
Lynn Cunningham, 3200 Bella Vista Dr.
Steve & Lisa Sofranko, Bella Vista Dr.
Michael Dennis, Winacre Dr.
Linda Sharp, Bella Vista Dr.
Kevin Gilligan, Town Attorney

Chairman Beggs called the meeting to order at 7:39 p.m. Everyone introduced themselves. He asked if the Board had a chance to review the meeting minutes from last month and if there were any additions or corrections. There were none.

Member's Doolittle moved and Kuhns seconded the motion to accept the April 6, 2004 Zoning Board of Appeals Meeting Minutes as submitted by the secretary. Motion passed unanimously.

Public Hearing on Notice of Appeal of Administrative Decision made by the Town of LaFayette Code Enforcement Officer dated February 3, 2004, Regarding Application of Daniel Oot for Premises Located on Route 11, Tax Map Parcel No. 22-03-05.1 .

Chairman Beggs said there has been a lot of controversy about this. There has been a letter circulated to the residents. There are some things people do not understand. The Zoning Board of Appeals has the responsibility of interpreting the Zoning Ordinance when there is a question or if someone gets a decision that they don't agree with from the Zoning Officer. The Zoning Officer can also come to this Board for an interpretation of the Zoning Ordinance. The Zoning Board of Appeals is the only

board that has the authority to overrule the Zoning Officer. He read the following letter which has been circulated to the residents.

“Please be advised that it is the intention of Daniel Oot to operate a commercial heliport and helicopter repair facility on his property in the 3200 block of Route 11, next door to Wood’s Automotive. Mr. Oot, a licensed pilot, also wishes to operate a flight school at this same location.

His initial application was referred to the Code Enforcement Officer who ruled that he cannot operate a commercial business on property that is zoned residential. Mr. Oot contends that he also plans to reside on this property and there is nothing in the zoning laws of the town that prohibit him from operating such an enterprise from his personal residence. He has filed an appeal and there will be a public hearing on this case on Tuesday, May 11 @ 7:30 p.m. at the Town Commons, 2577 Route 11 (see attached flier).

I strongly urge all who reside in the immediate areas of Route 11, Norman, Pioneer, Bella Vista, Mondore, Webb and Sentinel Heights Roads to attend this hearing and voice your concerns. I, personally, do not want to contend with the noise, dust, lights and annoyance of helicopters flying over my property at any/all hours of the day/night. Additionally, I was informed by my insurance carrier that my existing homeowner’s and auto insurance policies DO NOT COVER any damage or losses inflicted by a private aircraft crash on my property. I was advised to purchase separate riders to add this level of coverage because insurance claims against private individuals can take months or years to resolve.

As the LaFayette Jr./Sr. High School is in close proximity to this property I have notified the School Board and the Superintendent of this hearing as well. One unfortunate accident or mishap could have deadly ramifications for anyone in our town with children at the school. I believe the potential impact, then, should be communicated beyond just our neighborhood and I encourage you to alert any/all you fell would share in this concern. Thank you for taking the time to read this bulletin and become informed. I now ask that you take the time to attend the public hearing to hear more about this issue and get answers to your questions first-hand. I believe the Code Enforcement Officer’s decision is the right one and the one that maintains the safety and tranquility of our neighborhood. It is important that we seize this opportunity to demonstrate our support for this decision and to ensure that it is upheld. Thank you for that anticipated support.”

Mary Jo Kelly said the attached flier was a copy of tonight’s agenda.

Chairman Beggs noted this letter was unsigned. He read the following letter written by the Zoning Officer, Ralph Lamson, to Dan Oot dated 2/3/04.

“I have looked into your request to move your business to your property (Tax Map # 22-03-05.1) in the Town of LaFayette. The following approvals will have to be given before I can issue any building permits. The Zoning Board of Appeals will have to give approval by Specific Permit for the landing of aircraft. I feel your business falls under a private airstrip as you will be the only business using the property. The Planning Board will have to issue Controlled Site Approval for the School aspect of your business. This is based on our conversation that the main business being conducted on the property would be flight instructions. I can be reached at 677-5371 if you have any further questions regarding this matter.”

Chairman Beggs read the following portion of the Planning Board Minutes of their meeting held 1/20/04.

“Sketch Plan Conference with Dan Oot regarding Controlled Site Approval for Tax Map # 022-03-05.1

Dan Oot said the property is next to the Mondore Auto Auction. He is in the helicopter business. He would like to build a 48’ x 60’ barn and move his operation out here.

Chairman Nakas noted the property is located on the north side of the Syracuse Auto Auction on the west side of Route 11.

Dan Oot said he has two helicopters. They do most of their business in the summer and very little business in the winter.

Chairman Nakas asked if there was an aviation group that would look at the site regarding safety concerns, etc.

Dan Oot said no.

Member Markoff asked about the noise level.

Dan Oot said Route 81 would make more noise than these helicopters.

John Langey asked if the parcel he is looking to put the business on is a stand-alone parcel.

Dan Oot said yes.

John Langey asked if he has to file flight plans when he goes up.

Dan Oot said no.

John Langey asked him to describe the nature of the business.

Dan Oot said a commercial helicopter business. They do training, give rides, etc.

John Langey said he would be training new pilots how to operate helicopters.

Dan Oot said yes.

Member Markoff asked if that would be done away from this site.

Dan Oot said yes.

Member Lasky asked if he would have fuel tanks on the property.

Dan Oot said they have an 800-900 gallon truck that they use.

John Langey said the applicant is seeking controlled site approval.

Chairman Nakas asked if this was something John Dunkle could look at.

John Langey said at this point, it’s more a matter of interpretation. Down the road it might be sent to John Dunkle to review.

Chairman Nakas was surprised that there isn’t some type of regulating agency.

John Langey would recommend Ralph Lamson take a look at this. He said this might be a specific permit rather than controlled site approval. He would like to have Ralph Lamson review it. He asked if Dan Oot could get the information regarding noise levels.

Chairman Nakas asked if this would fall under controlled site or specific permit.

John Langey said he would like Ralph to take a look at this first as it’s really his first call.

Chairman Nakas asked about fencing.

Dan Oot said part of it would be fenced.

Chairman Nakas asked if he had spoken to any of the surrounding property owners.

Dan Oot said no.

John Langey said the way the code reads, if it doesn't address something being allowed, it's not. Ralph can recommend the applicant go to the Zoning Board of Appeals for interpretation. He doesn't see anything in the Zoning Ordinance that mentions this exact type of business. He will review the ordinance further. He would recommend Dan Oot go to Ralph Lamson first. If Ralph determines there's nothing in the Ordinance, it can go to the Zoning Board of Appeals for their review and interpretation of what the applicant should do...."

Chairman Beggs read a letter he received from the Chairman of the Planning Board, James Nakas, dated 3/9/04.

"As Chairman of the Town of LaFayette Planning Board I have been authorized by the Planning Board to appeal the determination of the Code Enforcement Officer dated February 3, 2004 regarding an interpretation of the proposed application of Daniel Oot to locate a commercial helicopter business on the premises known as Tax Map Parcel No. 22-03-05.1, Route 11, Town of LaFayette, New York.

The basis of the appeal is that upon reviewing the relief requested by the applicant and upon reviewing the Code Officer's determination, the undersigned and the Planning Board are not in agreement with the interpretation that this is a 'private airstrip'. Information received from the applicant was that this would be a commercial enterprise open to the public. The Code Enforcement Officer's apparent basis for indicating that the proposed use is an allowed use subject to specific permit approval is apparently based on his reading of Article 2, Section A of the Town Zoning Ordinance. We recognize that the applicant is seeking to run his commercial operation in an industrial zone. However, the alleged authority for this particular use apparently arises from uses which are said to be permitted in an Agricultural/Residential (A/R) District. Accordingly under Section A(1), Subdivision (d) of Article 2, one of the specifically permitted uses in A-R districts includes 'private airstrips'. It is apparently the code officer's interpretation that 'private airstrip' (an undefined term in our Code) is equivalent to a commercial airstrip, a concept with which we cannot agree. From the Planning Board's perspective the appropriate and reasonable interpretation of what would be allowed in an A-R district (our most sensitive and protected districts) would not include a full-blown, high intensity commercial operation such as a commercial airstrip or helipad business. From the discussions we had with the applicant he would be moving his fully commercial operation from Syracuse's Hancock Airport to his location on Route 11, next to the Auto Auction and between Route 11 and Route 81.

Clearly this would not be a private airstrip but a commercial operation open to the public. The danger of this interpretation standing would be the allowance of other individuals (some who may be located in residential zones) to request and receive permission to run a commercial airstrip operation in these protected residential zones. It is our feeling that it was clearly not the intent of the Town Board to allow a commercial operation in an A-R zone but was properly meant to allow for a true private (i.e. use by only a farmer or homeowner on a large lot of land) airstrip. We are reminded of crop dusters and perhaps a small Cessna-type airplane owned by an individual on a private piece of land for his own private (personal) use. A commercial operation of this sort should not be allowed in an A-R district and we feel that an interpretation in the alternative would create significant planning issues for the town. I feel a proper interpretation would require an application for a use variance.

In that regard we hereby submit this appeal for the Zoning Board of Appeals consideration.,,”

Chairman Beggs noted private airstrips are allowed in Agricultural/Residential Districts. In Ralph Lamson’s letter to the applicant he states that the applicant must get specific permit approval from the Zoning Board of Appeals and controlled site approval from the Planning Board. As of this date, there has been no application filed by the applicant for a helicopter pad at this location. The purpose of this public hearing tonight is for the Zoning Board of Appeals to review the facts and make a determination if the intended use is a private airstrip or a commercial operation. There has been no formal application submitted. This Board must make the interpretation as no other board in the town has that authority. He asked John Langey to confirm this.

John Langey said that is correct.

Chairman Beggs felt the best way to start the public hearing tonight was to lay the cards on the table so those present could understand what the Zoning Board of Appeals is looking at. He asked for input from the Board Members.

Member Doolittle said he thinks probably a number of people are here tonight to voice their opinion one way or another. To make sure this Board is talking about the same thing they are, he would like to note that the letter circulated to the residents seemed to indicate the property was across the road from the Auto Auction. Actually, it is the property bordering the Auto Auction north of the dirt road. This Board is talking about the opinions of the Zoning Officer and the Planning Board. At this time, Dan Oot is not here asking for anything. He believes the Auto Auction is zoned Industrial which ends at the dirt road where it becomes an Agricultural/Residential District.

Chairman Beggs believes this tax parcel is zoned Agricultural/Residential too. There have been some statements made that it is zoned Industrial.

Ralph Lamson believes it is zoned Industrial. If not, the applicant would have been denied all together.

Member Doolittle noted there is nothing in the Zoning Ordinance which addresses helicopter pads.

John Langey said the Town of LaFayette has an ordinance like a lot of other towns which is an exclusive code. Each district names the uses allowed in it. If someone comes in proposing a use that’s not listed, it’s not allowed. The applicant could be advised they could apply for a use variance or they could go to the Town Board and request an amendment to the Ordinance.

Member Drumm believes a private airstrip and a heliport are two different things.

There was discussion on the zoning of the parcel. No determination was made at this time.

Ralph Lamson said the only way to determine the zoning would be to go by the scale.

Member Kuhns finds it hard to believe the FAA doesn’t have some kind of limits for a proposal like this.

John Langey agreed and asked that question at the Planning Board Meeting and the applicant responded that they didn’t. Had an application been submitted for this proposal, he would have recommended receiving a letter from the FAA stating they had reviewed the proposal in its entirety.

Member Kuhns said their guidelines could help this Board out pretty quickly.

John Langey said in the ordinance as it stands nothing could be found addressing anything resembling this proposal until you reach the Agricultural/Residential District. Does this Board agree with the interpretation that ultimately could lead to filings of applications where commercial airstrips would be allowed in Agricultural/Residential Districts? This Board is being called upon to use its common sense and understanding of the intent of the town to make its determination.

Member Drumm still believes there's a difference between an airstrip and a helipad. There wouldn't be enough room to put an airstrip on this property.

Member Kuhns believes there's a big difference between a private and commercial airstrip.

Linda Sharp knows a few years ago people tried to put a business up by McDonalds and because the school was so close, it wasn't approved. Wouldn't the school being so close to this property enter into the decision?

Chairman Beggs said that would certainly be taken into consideration.

Lisa Sofranko said she lives on Bella Vista and believes this is why most of the residents are here tonight. They like where they live and pay good taxes to live there. They don't want a helicopter pad or airstrip. They are just asking the Board to consider their feelings. There's also concern for the children that live in the area and attend the school.

Chairman Beggs said this Board appreciates the input from the public.

Michael Dennis said he doesn't know what the FAA states about helicopters but he knows they have to have a clear route from power lines and you must have a sound abatement study done. On the ground the helicopter may not be very loud but once it enters the air, the blades are breaking the sound barrier and that is when the noise is the worst. As the applicant stated in the Planning Board Minutes, he plans to operate a business.

Chairman Beggs said if the applicant filed an application with the Zoning Board of Appeals for a private airstrip, this Board would require information like this. The charge before this Board tonight is to determine if this is a private or commercial operation.

Michael Dennis believes in the Planning Board Minutes the applicant said it would be a business and that he would be training pilots. There is definitely an inexperience factor if you are training pilots. Route 81, the school, residents, etc., all come into play here.

Linda Sharp asked if he were just going to use the helicopter to fly back and forth to work, would it be different? Would that be O.K.?

Chairman Beggs said private airstrips are an allowed use in an Agricultural/Residential District provided the applicant gets specific permit and controlled site approvals. This Board is charged with making a determination as to whether this proposal is for a true private airstrip or for a commercial operation.

Linda Sharp asked if he decides to say its private and he is just going to use the helicopter privately, would it be different?

Chairman Beggs said it wouldn't be a definite approval. The applicant would have to meet the requirements of the Boards. An FAA endorsement would be required.

A resident said whether it's private or commercial, she hopes this Board wouldn't allow a helicopter to land in her backyard. It's all residential and she would hope the Board wouldn't approve anything like this.

Lynn Cunningham said she has been a resident and land owner on Bella Vista for almost 9 years. She has been a resident of LaFayette for a total of about 13 years. Whether it's a commercial or private issue, she doesn't want the sound of a helicopter coming in and out of her neighbors front or back yards. There is a noise issue as well as safety issues. There will be effects on their property values, liability issues, insurance as well as the effects to the community overall. When you make a change, there is always some sort of ripple effect. Regardless of the zoning issues, there will be an affect. Whether it be the residents in the area selling their houses and moving or other effects that happen because of one enterprise coming in and doing whatever it does. She hopes the Board will find in favor of the community and residents.

A resident said he moved to LaFayette a little over 2 years ago because it was quiet and peaceful. They moved here from the city. The place they are proposing to put this is right in his front yard. He doesn't want his kids having to deal with it. He has an infant and the other kids must go to bed early for school. He doesn't believe this would be a good place for a helipad.

Mary Adam said she also lives on Webb Road. She has the same concerns as everyone else here. She would ask for the Boards consideration regarding the proximity of this site to the high school. All the athletic fields are there and the cross country kids run the roads around there.

Chairman Beggs asked for any other questions or comments.

A resident asked if the loudness of the helicopter would hinder the students from being able to concentrate at school.

John Langey said the question tonight is whether this is commercial. He asked if anyone on the Board believes it is private as Mr. Oot has already stated in the Planning Board Minutes that it will be a commercial operation.

Lynn Cunningham asked if there are any regulations regarding proximity of a helicopter pad to gas lines and towers.

Chairmen Beggs said if there were an application filed by the applicant, the applicant would be required to obtain these types of approvals from the appropriate agencies. At this time, there has not been an application filed. The charge before this Board tonight is to determine if this is a private or commercial operation.

A resident asked if because there was no application tonight, has the applicant abandoned this idea?

Chairman Beggs said to the best of his knowledge as there is no application before this Board, he isn't moving forward at this point in time. He could come in tomorrow and file an application.

A resident asked if it was appropriate for them to ask this Board how they feel about an application of this type.

Member Drumm said the Board doesn't have all the information to make a decision without having an application or information on it.

Lisa Sofranko asked if it was going to be across the street from one of the Board Members, how would they feel?

John Langey said this Board is not allowed to prejudge something. They take each and every application on a case by case basis. They have criteria in the code which they take very seriously. They will be deciding if proposals such as this one would require a specific permit and controlled site approval or a use variance and controlled site approval. This Board will be interpreting if this is strictly a private airstrip which will mean anyone coming in for an application for a public airstrip will require a use variance which is the most restrictive variance you can get under New York State law.

Member Drumm said this is just an informational hearing tonight. It's all hypothetical as an application has not been filed.

A resident asked since this is not identified in the code, what would it take to put in the code that this is not allowed?

John Langey said if the Zoning Ordinance doesn't list it as an allowable use, it is not allowed.

Chairman Beggs asked for any other comments or questions. There were none.

Chairman Beggs closed the public hearing. He feels after reviewing the minutes and the correspondence, this is strictly a commercial operation and in the Zoning Ordinance commercial operations of this nature are not an allowed use in an Agricultural/Residential District. The applicant could apply to the Zoning Board of Appeals for a use variance for that property. That is the only way it would be a permitted use if it were determined it is a commercial use. Based on what we have read, he thinks as a Board they have to rule on the fact that it's a commercial operation and not allowed. The applicant would have to apply for a use variance to get such an operation at that location or any place else in the town. Commercial air facilities are not spelled out in the LaFayette Zoning Ordinance and since they are not spelled out, they are not an allowed use.

Member Drumm noted in the letter circulated to the residents it mentioned helicopter repair.

Chairman Beggs said he doesn't know where the information in the flier came from. Based on the Planning Board Minutes and the letter from the Chairman of the Planning Board, this Board is charged with having to make a decision as to whether it is a commercial or private operation. If the applicant would like to state this is a private operation, he may apply to this Board.

Member Kuhns said this really is whether a private or public airstrip is allowed in an Agricultural/Residential District.

Member's Doolittle moved and Drumm seconded the motion that upon a review of the Planning Board Minutes dated 1/20/2004, and upon review of the Code Enforcement Officer's letter dated 2/3/2004 stating his written determination to Mr. Oot, and upon a review of the LaFayette Zoning Ordinance, the Zoning Board of Appeals concludes to grant the charges of the Planning Board to overturn the decision of the Code Enforcement Officer's opinion in finding that an Agricultural/Residential District allows for commercial airstrips and determines that any application for a commercial airstrip operation will require a use variance application under the existing Zoning Ordinance. Motion passed unanimously.

Chairman Beggs noted the applicant has the right to apply. It doesn't mean he will be granted or denied but he has the right to apply. It has been determined that a commercial airstrip is not an allowed use in the Town of LaFayette.

CASE # 564 – Public Hearing on Appeal of Robert Haight for a 13’ side yard variance of his property located at 2095 Deer Run Rd. on the west side of Deer Run Rd. approximately 291’ from the Holcomb Hill and Deer Run Rd. intersection in an Agricultural/Residential District.

Chairman Beggs opened the public hearing and asked Mr. Haight to explain his proposal.

Mr. Haight said they moved the proposed building around and were able to come up with the 13’ side yard variance required. It will be no further forward than the front of the house. They are even thinking that it will be 1-2’ further back. The furthest forward it would be is even with the front of the house.

Chairman Beggs reviewed the application. Originally the applicant was hoping for a 24’ side-yard variance and there was some question as to where the waterline was located.

Mr. Haight said that will not be an issue. They have talked to a couple of people who have decided there wouldn’t be a problem with it.

Chairman Beggs said they will want a survey showing the physical location of the building. This Board will need a site plan on file showing the location of the building on the property.

Chairman Beggs asked if there were any other questions or comments. There were none. He closed the public hearing. He asked Ralph Lamson if he looked at the footprints of the building or the overhang when determining setbacks.

Ralph Lamson said both. At first he looks at the footprints and if it’s close, he asks what kind of building it is and looks at the overhang.

Member’s Kuhns moved and Drumm seconded the motion to grant a 13’ side-yard variance from the southerly property line to erect a 20’ x 28’ building, to declare this Board Lead Agency, this is an unlisted action and a negative declaration in the SEQR process with the following conditions:

- 1. The proposed structure will be no closer to the easterly property line than the existing building line of the house.**

Motion passed unanimously.

CASE # 565 –David Muraco has withdrawn his application for a specific permit for a retail business dealing with home sales at his property located on the southeast corner of the Route 20 and Route 11 intersection in a Hamlet District.

CASE # 566 –David Muraco has withdrawn his application for a specific permit for a retail business dealing with home interior decorating at his property located on the southeast corner of the Route 11 and Route 20 intersection in a Hamlet District.

Chairman Beggs advised the applicant has withdrawn his applications for the above two cases.

CASE # 567 – Appeal of Russell Burlingame, Jr. for a variance on his property located at 4202 West Shore Manor approximately ½ mile north of the West Shore Manor and Apulia Rd. intersection in an Agricultural/Residential District.

Russell Burlingame, Jr. said he has a lot on Jamesville Reservoir. His mother is 81 and they would like her to move in with them so they need to make their house bigger. The septic system is right in front of the house and they can't go out on either side. They are asking for a 5' variance to enlarge their house off the back towards the reservoir.

Chairman Beggs asked if the addition will maintain the same building line on the sides.

Russell Burlingame, Jr. said yes.

Chairman Beggs said if he maintains the building lines on the sides, no side-yard variance will be required as you won't be encroaching on the neighboring property lines any closer than you currently are. On the Jamesville Reservoir side, a 30' rear yard setback is required. They are currently back 41'. They are proposing an addition of 16' so they will need a 5' rear yard variance.

Russell Burlingame, Jr. said it might be 6'.

Member Doolittle asked about the blue line area.

Ralph Lamson said it doesn't exist any more. If it did, it would be considered a separate parcel.

Russell Burlingame, Jr. said they own to the water. When the opportunity arose, they bought the blue line property.

Member Drumm believes they should go with the front property line being the part towards the road.

Ralph Lamson said the roadside of the house is considered the front of the property as you want this to be the biggest setback from the road.

Member Doolittle would recommend he get the measurements of the neighboring properties.

This will be scheduled for a public hearing at the next meeting.

CASE # 568 – Appeal of Jason Griffin for a side-yard variance on his property located at 3258 Webb Rd. approximate 650' west of the Route 11 and Webb Rd. intersection in an Agricultural/Residential District.(Tax Map # 024-02-02.2).

Jason Griffin discussed his application.

Chairman Beggs asked about bringing the driveway around back.

Jason Griffin said he has had people come in to look at the site and they expressed concern that if there were any digging in the backyard, it could lead to problems with the leach field.

Member Doolittle asked if he could check the map of the leach field and bring it with him to next month's meeting.

Member Drumm asked how old the house is.

Jason Griffin said about 10 years old.

Chairman Beggs said looking at the proposal, the applicant is looking for a side-yard variance of 15 feet from the south property line.

The Board recommended the applicant take some pictures of the property for the next meeting.

This will be scheduled for a public hearing at next month's meeting.

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

The Zoning Board of Appeals Meeting adjourned at 9:33 p.m.

Respectfully submitted,

Mary Jo Kelly
Secretary