

Minutes of the April 11, 2006 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 at 7:30 p.m.

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

Recording Secretary: Mary Jo Kelly

Others Present: Wendy Reese, ZBA Attorney
Ralph Lamson, CEO
Lorraine Brown
Jerry Brown

Chairman Beggs called the meeting to order at 7:36 p.m. Everyone introduced themselves.

Chairman Beggs asked if there were any corrections or additions to the February 14, 2006 Meeting Minutes. There were none.

Member's Doolittle moved and Kuhns seconded the motion to accept the February 14, 2006 Zoning Board of Appeals Meeting Minutes as submitted by the Secretary. Motion passed unanimously.

Sketch Plan Conference for use variance request by Lorraine and Jerry Brown for 3340 LaFayette Rd.

Lorraine Brown said at the last meeting they attended, they were told there were no mobile homes in the Town of LaFayette. She spoke to Jane Warner who has just replaced her mobile home with a new mobile home. She applied for a variance and got it. There are trailers on farms where the owner is not working on the farm. Thorpe's is one of these farms. They have an organization that is willing to help them be able to put a double-wide on their home if they get a use variance. They have lived here all their lives. Their son goes to school here. It seems the town would like them to better their area. She didn't realize what took place with her father years ago for the trailer and didn't realize he didn't have a use variance for the trailer until she received the information from Mary Jo.

Chairman Beggs said he didn't know either at the last meeting. He asked Mary Jo to research this. The first documentation was back in 1964. He had a 3-year specific permit for the trailer.

Lorraine Brown said that was her grandfather.

Chairman Beggs said that expired. He applied for a use variance in 1975 and that was denied.

Lorraine Brown said she didn't know that until she got the information from Mary Jo. When her father passed away, her mother still lived there. She and her husband

moved into the trailer so her mother wouldn't have to sell it because the land has been in the family for so long. She doesn't understand how they self-created the hardship by trying to improve their living conditions. It's a 1968 mobile home. She doesn't believe she should have to sell her property to let someone else live there and she would have to go find somewhere else to live.

Chairman Beggs said the property is zoned Agricultural/Residential. In an Agricultural/Residential District there are only specific locations where trailers are allowed structures. The Zoning Ordinance covers that very well. As far as the hardship, he will ask the attorney to address this. Basically if the property can be used for what it is zoned as, that is one thing. If it's trying to be used for something else, that's where the definition comes in from a legal aspect.

Lorraine Brown asked if they go buy cows, goats, and chickens can they keep the trailer because they are allowed on farms?

Member Drumm said you will have to have 50% of your income derived from the farm.

Chairman Beggs thinks for farms it's for the hired hands that derive a certain percent of their income from the farm.

Ralph Lamson said that is correct.

Member Miller asked if a double-wide qualifies under the New York State Building Code.

Ralph Lamson wasn't quite sure what he meant.

Chairman Beggs asked if a double-wide trailer met the NYS Building Code for an approved structure in an A/R District.

Ralph Lamson said a double-wide can be built to meet the standards for NYS Building Code. Double-wide's are built different for different areas of the country. One could be built to meet NYS Building Code.

Lorraine Brown said Southern Hills is willing to work with them to have the double-wide built to meet the codes.

Member Kuhns asked if it will be set on a foundation.

Jerry Brown said it would be set on a slab. The outsides would be brick. It will look like a foundation. There would be no basement. They checked into a slab home.

Lorraine Brown said Southern Hills has tried to help them as much as they can. They advised her to come tonight to see what the Board would say. She can't see spending the money to try to make the trailer look better. It can't be done. Her mother would love nothing more than to come back to that site to live but it's not safe enough for her to live there now.

Chairman Beggs asked if there are double-wides that would meet the zoning requirements in the Town of LaFayette.

Ralph Lamson isn't sure what he is calling a double-wide. There are mobile homes and modular homes. They are two different structures. A manufactured home is not allowed in our zoning except in trailer parks whereas a modular home can be put anywhere you want.

Chairman Beggs said that was his understanding. If you had a farm and derived more than 50% of your income from the farm, one could be put there.

Lorraine Brown said for her to file for a use variance, it would be senseless.

Chairman Beggs asked the attorney to explain this.

Wendy Reese said the NYS legislature is very exact in regards to use variances. It's probably the toughest standard to meet. Basically you have to show unnecessary hardship. There are 4 things you have to show.

- 1) **Can not realize a reasonable return – substantial as shown by competent financial evidence.** This means there's nothing else you can use your property for. It can't be used for what it's currently zoned to be used for. This would be difficult to prove here as you could probably be able to build a home or put a modular home on the site.
- 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.** This would possibly be the easiest to prove in this case.
- 4) **Alleged hardship has not been self-created.** In other words, it's something that exists independent of your circumstances.

New York State is the one that has put these restrictions on and the Board has very little leeway as far as what they can grant in regards to a use variance.

Chairman Beggs said this Board couldn't grant a use variance for a business to be put in an Agricultural/Residential District. People come before this Board for many instances regarding use variances. As far as Jane Warner's trailer, it got put in there because she got a use variance years ago. It was a unique piece of land that couldn't support a house. They got technical data from firms to prove this. She overcame the unique situation. It was a hardship not created by her. It was a hardship that had nothing to do with her personally. They had the land and due to the soil and topography they couldn't put anything else there. She was allowed to upgrade the trailer because of this variance.

Lorraine Brown said that is what they are trying to do.

Chairman Beggs said it took a long time. She had to get engineering documentation to support that the land couldn't be used for anything else. He hopes Lorraine understands what this Board is guided by. Quite frankly, unless she can show some documentation that would show they have a unique situation where the land can't be used for anything else, the Board can't grant a use variance based on financial hardship. Personal financial hardships are not recognized by zoning. This Board may feel badly but their hands are tied.

Lorraine Brown said if they wanted to do the work on the trailer, they would have to come for a building permit.

Chairman Beggs asked Ralph Lamson to address this.

Ralph Lamson asked what they are looking to do.

Lorraine Brown said a new roof, cut a hole out on the side of the trailer and some new siding.

Ralph said as far as a new roof or siding, they have allowed people to do those things on trailers.

Lorraine Brown asked if they can use the trailer as a shell and put an addition onto it.

Ralph Lamson said as far as putting an addition on, you would be expanding a non-conforming use which isn't allowed.

Lorraine Brown asked if they can replace their porch.

Ralph said as long as it's not bigger than what they have there now.

Jerry Brown asked what if the addition doesn't touch the ground.

Ralph Lamson said you would still be increasing the footprint of the building.

Chairman Beggs said basically a trailer in that location is a non-conforming use and there are specific rules that apply to what you can do with a non-conforming use. He doesn't believe you can expand beyond its existing footprint.

Member Drumm said or if it's taken down, he doesn't think it can be replaced. If you take a mobile home off the property, you can't replace it with one. You can't expand on what you have.

Chairman Beggs said the NYS Zoning Laws intent for non-conforming uses is for them to basically go away over time. It's allowed to exist in the state it is right now as long as it's not modified. You can't modify or expand a non-conforming use. The way it's written, its intent is that it can live out its normal useful life and when the useful life is exhausted, it's to be replaced with a conforming use.

Lorraine Brown said they have some options they will have to figure out. She knows more than she did at the last meeting.

Chairman Beggs wanted to be sure she understood what this Board's limitations are. This Board by no means is wanting to say no, you can't improve anything but it is bound by the state as to what they can allow. If this Board did what it might want to do and someone was opposed to the use variance, they could sue the town.

Member Kuhns said in reading the definition of a mobile home, he always had in his mind a double-wide was different from a mobile home. Does anyone know where the definition came from?

Chairman Beggs said it came before he was on the Board. Like most things in this world, they have improved the product over time. According to the NYS Building Code, modulars meet it.

Ralph Lamson said mobile homes can meet the NYS Building Codes if they are built for this area. The basic difference between a modular and a mobile home is the substructure underneath them.

Member Drumm said one is set on a foundation and the other is not.

Member Kuhns said it puzzles him because if you had property and you had a 28' wide by 57' long double-wide, you would never know it wasn't a house. He asked Ralph if he was right.

Ralph said yes. If someone put it up on a brick foundation, you wouldn't be able to tell when you drove by.

Member Drumm thinks materials between the two are different too.

Ralph Lamson said the building code would have to hold up to the weather in this area.

Jerry Brown said the modulars and double-wides are almost built the same way now. On a modular you pick the color of the walls, etc and in a double-wide you don't. In a mobile home the washer, dryer, etc. come with it. In a modular they don't.

Member Kuhns asked the difference in price.

Lorraine Brown said a double-wide is about \$50,000 cheaper. Southern Hills would be able to do the septic, etc. for \$40,000.

Jerry Brown said the walls for both would be 2' x 6'.

Ralph said this is probably so that they meet the energy codes.

Lorraine Brown said this is why they are trying to do a double-wide.

Member Kuhns asked if the state defines a double-wide as a trailer or does LaFayette define a double-wide as a trailer.

Wendy Reese said she would have to research this.

Ralph Lamson thinks the state building code defines it too.

Member Kuhns said then our hands are tied.

Jerry Brown doesn't understand how they put them in Otisco, etc.

Member Kuhns said it depends on the zoning. He would be curious about the states definition.

Lorraine Brown said if she can prove nothing can be built on her property besides a mobile home, is that what she would have to prove to get a use variance?

Member Drumm asked if she meant financially or because of the property.

Lorraine said because of the property. If she could prove that, there's a possibility she could meet the use variance criteria.

Member Drumm thinks that would be awfully hard to prove. She would have to have engineers come out to the site. You can build about anything on anything now.

Wendy Reese said basically they would have to show with financial and engineering evidence there is really nothing the property can be used for other than what she is requesting the use variance for.

Chairman Beggs said maybe Southern Hills can find a structure that would meet the requirements.

Lorraine Brown said but it couldn't be a double-wide.

Jerry Brown asked if a stick built home on a slab is allowed in LaFayette.

Member Doolittle said yes.

Member Kuhns said you would have to put in footers to put the slab on.

Ralph Lamson said another option they could have is to go to the Town Board to see if they can get the Zoning Ordinance changed.

Lorraine Brown asked what that consisted of doing.

Ralph said they could ask the Board if double-wide trailers could be allowed in Agricultural/Residential Districts if they are put on a foundation. This zoning was set up in 1970. Mobile homes have changed a lot. The request could be for double-wides only. That is the way other towns have done it. He advised them to get the square footage of a modular home and of a double-wide home. He advised them to get pictures of both to show the Board. Maybe it's time for a change in the definition. Present the case to the Town Board and see what they would like to do.

Mary Jo will ask the supervisor to put them on the agenda for the next Town Board Meeting.

Chairman Beggs asked if there are some towns that allow double-wides.

Ralph Lamson said yes. One of the instructors who teaches the classes for code enforcement is an advocate of them as he lives in one. He has brought this up several times. Once you set one down and put brick around the bottom of it, you can't tell the difference today.

Wendy Reese believes the definition of a mobile home was defined by the Town Board when they created the Zoning Ordinance. It could be changed but it would require a change in the zoning code. It would be an amendment to the ordinance but would have

to go through the proper procedure. They couldn't have a double-wide with the definition the way it is in the Zoning Ordinance now.

Ralph thinks in the classes, the definition used the square footage.

Chairman Beggs said the foundation could be added to this.

Ralph said some towns eliminated mobile homes from their town which got challenged right away. LaFayette said you can have them but they have to be in parks. The way they have changed over the years, it's definitely time to look at the definition again.

Chairman Beggs didn't realize the substantial difference in price.

Ralph doesn't know if it's that much or if it's because they are getting help with the double-wide.

Wendy Reese thinks one of the differences is the installation of the mobile home.

Chairman Beggs believes this is something that needs to be looked at.

Ralph said it was set up over 30 years ago. They have triple-wides now too.

Chairman Beggs said he understands Mr. May's case is not quite resolved.

Wendy doesn't know the status of this.

Ralph said we were allowed to present our side of it. If Mr. May doesn't win, the judge can make his decision and order Mr. May to remove the trailer.

Chairman Beggs said so far the court system has supported the town.

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

The Zoning Board of Appeals Meeting adjourned at 8:25 p.m.

Respectfully submitted,

Mary Jo Kelly
Secretary

Adopted 6/13/06