

The regular Meeting of the Zoning Board of Appeals of the Town of LaFayette was held September 11, 2007 at 7:30 PM in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette

Members Present:	Steve Beggs	Chairperson
	Bob Drumm	Member
	Dan Kuhns	Member
	Jerry Doolittle	Member
	Christine Keenan	Member

Recording Secretary: Mary Jo Kelly

Others present: Nadine Bell, ZBA Attorney
Mike Amidon
Jim Nakas
Bill McConnell, Councilor
Ralph Lamson, CEO
Joan Belmont
Sheila Kelley

Chairman Beggs called the meeting to order at 7:35 p.m. He welcomed everyone and had everyone introduce themselves.

Chairman Beggs asked if there were any additions or corrections to the August 14, 2007 minutes. There were none.

Member's Drumm moved and Keenan seconded the motion to accept the August 14, 2007 Zoning Board of Appeals Meeting Minutes as submitted by the Secretary. Motion passed unanimously.

INTERPRETATION OF ZONING ORDINANCE REQUESTED BY SHEILA KELLEY AND LAFAYETTE JUSTICE COURT REGARDING BUSINESS BEING RUN AT 2386 ROUTE 11A.

Chairman Beggs said he received a letter from Ralph Lamson to the Zoning Board of Appeals.

“I am writing in regards to an interpretation that was made regarding a nonconforming use at 2386 Route 11A in the Town of LaFayette. Over the last forty years or so the barn on the property has been used for a roofing business then an air conditioning/refrigeration business. The business was then changed to an office for a construction company. The question is if this change is allowed or should approval from the Zoning Board have been sought to make the change. My thoughts on allowing the change was that it went from a F-1 occupancy (moderate hazard) to a business occupancy. This obviously does not get rid of a nonconforming use, but does have a lower impact on the neighborhood. I plan on attending the meeting on September 11 to discuss this matter with you...”

Chairman Beggs asked for any comments from anyone at this point in time on the letter. There were none.

Chairman Beggs asked Ms. Kelley to address the Board and explain the interpretation she is looking for.

Sheila Kelley said she isn't quite sure what they are doing here in the first place. She thought the interpretation was on the rules.

Chairman Beggs said it's a non-conforming use. Non-conforming uses fall in different categories. If you are the original owner that was operating this business 40 years ago and can continue to do the same thing right through to today, it would be grandfathered in.

Sheila Kelley asked if it matters that it was your family.

Chairman Beggs said you would have to be the same person running the same business. When the business changes then the change from the existing business to the new business would require a new application to the correct board. A home occupation would be in the hands of the Planning Board. Whatever category this business falls under would have to have an application to the correct board to review the proposal. The letter from Ralph states the business that is running from that location has changed over the years. The fact of the case is that you are taking a piece of property and running a business that did not exist before. You have to get the correct approval from the correct board to run a business from that location. He is not here to determine what the application should be. Non-conforming uses cannot be expanded, cannot be altered, etc. They can continue to exist as a non-conforming use as long as nothing changes. The intent of the law is that over time the non-conforming use will disappear. He asked counsel to explain any details he might have missed.

Nadine Bell said when the property has a non-conforming status, it can change ownership as long as it continues the exact same use. The purpose of a non-conforming use is to say we recognize when a zoning ordinance is put into affect there may be uses that don't comply with what we now have. To take care of the properties that are not conforming with the new zoning ordinance, they are given a non-conforming status. This protects them from having to change immediately. They are not allowed to change in any way. The Zoning Board of Appeals is an appellate board. This procedure has gone astray. For the ZBA, because they are an appellate board, they must have something before them that is being appealed. They have to have something to act on. Since there is no application before them this evening, they can't make a decision on it.

Sheila Kelley said that is what they need to do.

Nadine Bell said this is just for informational purposes. At this point an application should be filed and the CEO should render a final decision addressed to the actual property owner. She can appeal his decision and schedule a public hearing and go through the normal process. There is a certain procedure under law that you must go through.

Chairman Beggs said his recommendation is that if she is running a new business from this location she should apply to the appropriate board for what she wishes to do there.

Joan Belmont asked where they apply and to whom.

Chairman Beggs said they can pick up an application from Mary Jo. If they explain to the CEO what they want to do, he can determine which board they should go to get the approval.

Ralph Lamson thinks the Board pretty much answered their question. By not being allowed to alter non-conforming use, they would have to apply for a use variance and the chances of getting that are pretty much nil.

Chairman Beggs asked if what they want to do would require a use variance or home occupation.

Ralph said the way they are set up right now, it would be a use variance. They would be running a business in an A/R District so they would be looking for a use variance. The other possibility is to move the business into the house which they said they don't want to do.

Jim Nakas said this is a greatly expanded use from the business that was done there 20, 30, 40 years ago. There are full-time employees. This is a full-fledge construction business that is being run out of this property. We keep referring to a home occupation. This isn't a home occupation, it's being run out of the barn. Our zoning laws state you cannot do that under a home occupation and the reasons for that are clear.

Chairman Beggs said that is why he said the applicant must talk to the CEO for what is required. Since he doesn't have an application in front of him, he doesn't have anything to act on.

Jim Nakas said it would seem they would need a use variance which would come before the ZBA.

Chairman Beggs said that is correct.

Mike Amidon said if you have a business that has been running and you want to sell it, how long can you have it not operating before it is sold.

Nadine Bell said after one year it goes away.

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

INTEPRETATION OF ZONING ORDINANCE REQUESTED BY MIKE STEINER REGARDING BUILDING AT 5945 MAPLE GROVE.

Mary Jo said Mr. Stiner will not be attending tonight's meeting.

Mike Amidon said he was informed by the D.O.T. that his building is no concern. He needs the person to tell Chairman Beggs this.

Chairman Beggs said since the property borders two state highways, our Board will require a letter from the D.O.T. stating they release the type of business he wishes to do. Last month the Board told him this would be required before he could entertain anything.

Mike said he did call today and they were going to contact Chairman Beggs.

Chairman Beggs said he did have a missed call from them and will call them tomorrow morning.

Mike said the D.O.T. might take the building. He is looking for something maybe to put in the building that is low impact until they make their decision. He would need a special permit for a certain time period of 2-3 years or whatever so it goes with uses in the Hamlet. If he can get a special permit he is looking at storage.

Chairman Beggs said you must gain access to the building from some place to have storage. Wherever he is going to gain access to the building he must provide safe entrance and exit and parking if it applies. Most things require some parking. If he puts together a plan along those lines and the business he plans on running, the Board can review it. You need to have a plan put together to get a special permit. You would need clearance from the D.O.T. regarding access to the existing highway and some proposal for parking cars that are going to be there. He can put together a plan like that and submit it to the D.O.T. for their approve. He doesn't know if a special permit could be issued for a time period or not.

Mike said that is why he is here.

Chairman Beggs asked counsel about this.

Ralph Lamson thinks a use variance would have to be issued.

Chairman Beggs said the problem with use variances is that they go with the land. Once you issue it, there is no ending time on it.

Nadine Bell isn't aware of anything in the ordinance that would allow you to use the property for a period of time for a certain use.

Chairman Beggs said he is looking for some guidance on what the Board can do. He is telling Mike to get a plan submitted to the D.O.T. for approval. If they say no, that is the end of it. If he can get them to approve it, what can our Board do grant the relief he needs to make use of the building? How can we do it and put time limits on it?

Member Doolittle said he was spoken to about this and he doesn't know if it can be done. If the Board grants approval now and then in 2010 or whenever the state comes along and redoes the highway and they say he can no longer have a driveway, is there a need for us to put a time limit on it? We could just grant it and it could be the D.O.T. that ends the time period. In a way, they are overruling us when they redo the intersection.

Ralph Lamson said there has been a precedent set on this. People owning trailers were allowed to stay and live in the home until the life of the trailer goes away.

Nadine Bell said she thinks this fell under the non-conforming use when the ordinance was amended. The town allowed people to reside in the mobile home for the life of the home but it couldn't be replaced.

Ralph asked if a non-conforming use isn't a use variance.

Nadine Bell said you don't have to establish the criteria for a non-conforming use if it's already there.

Mike said suppose he had a grocery store, tile store, professional office, etc. and they were all allowed uses, can they be put back in the building?

Nadine Bell said not if the use has stopped for a period over one year.

Ralph said it would depend on what's allowed in the Hamlet.

Nadine Bell said if one of the items is not allowed in the zoning ordinance, you have lost the right to continue it because of the 1 year time-frame.

Chairman Beggs said so it still needs Department of Health approval.

Mike said and parking approval. He understands this.

Ralph thinks the question is does the Board want to issue a use variance without being able to set a time limit on it. The fact that the state may come in and take the building from him in a few years could be a possibility to allow a use variance.

Chairman Beggs said the Board can approve a use variance thinking in 3 years the state will take the building or on the other hand the state doesn't always do what they expect them to and there is question about granting a use variance.

Bill McConnell would hope the Board would consider that they have been working on a Restore New York Grant which Mike has stopped now as the D.O.T. discussed their boundaries last night at the Town Board Meeting. Up until last night, he had thought the boundary was from the sidewalk to the electrical outlet rather than 6 foot into his building. The D.O.T. is now saying they won't start their project until 2012.

Chairman Beggs said his recommendation to Mike is to get some plans before the D.O.T. for approval because this Board can't approve anything without their approval as he is along two state highways.

Bill McConnell said he just wanted to give a little bit of the background along with the new hardship that Mike didn't know about regarding the boundaries until last night. He found some information out on one of the things Member Drum brought up at the last meeting regarding the fuel tanks. Two summers ago he invited the Onondaga

County Health Dept. out. He asked them about the fuel tanks. There is no showing of tanks at the front of the building. The Town Board had thought of taking the building on as a donation to the town and the Board was advised the tanks should not be an issue any longer.

Chairman Beggs said that is good. He thinks there are a lot of fuel tanks around the state that no one knows about.

Member Doolittle asked if the state says they have a right-of-way to the building, don't they own the tanks?

Bill McConnell said yes.

Member Doolittle said it would become their problem.

Member Drumm asked if the state couldn't come out with something to tell whether there are tanks down there or not. Any of these places where they find tanks, they take out tons of soil around them for testing. If there are fuel tanks down there, he would think they are pretty rotted out. If they did rot out and there was any fuel in them when they rotted out, it's probably there. It is very expensive when the tanks must be removed along with the testing of the soil around it by the D.E.C. He doesn't want to see Mike get hung up on this.

Bill McConnell said he is sure there is a way to identify them. In his opinion it's a non issue with the Onondaga County Health Dept.. He doesn't have an opinion on what the D.E.C. would do. He reviewed the presentation made by the D.O.T. in April of 2006. He was a little shocked last night as to where the boundaries are. The original project mentioned that we would not need any space as Route 20 was wide enough to do what they wanted to do.

Member Drumm said he is just looking out for Mike..

Mike said last night the D.O.T. had 2 lines on the map. One line came down 2' into the building. The D.O.T. said this was no mans land. On Route 11 they had it coming 6' into the building. He will get some stuff together and come to another meeting. He is just looking to make money enough to pay taxes and insurance on the building until the D.O.T. decides what they are going to do.

Chairman Beggs said this Board can grant approval but without a release from the D.O.T. this Board can't go any further. He will call the D.O.T. tomorrow morning. This Board can't approve something that the D.O.T. disapproves. This Board doesn't have that power.

Nadine Bell said the D.O.T. and County Health Dept. approval are required.

Member Doolittle said he understands you could tear the building down and rebuild it but can you tear a part of the building down? In other words, if Mike took the addition to the building off, he might have space to put a septic treatment plant in.

Nadine Bell said she isn't aware of anything that would prevent him from doing this.

Ralph Lamson doesn't see why that wouldn't be allowed. There's no reason you can't take down part of your building.

Chairman Beggs said as long as he gets County Health Dept. approval for the septic system.

Member Drumm said he could spend a ton of money on this and then the D.O.T. could take it.

Member Doolittle said the value would be greater.

Chairman Beggs said the D.O.T. said the value would be what it's appraised at when they appraise it. If the building is vacant at that time, it would get appraised for less money.

Member Drumm said he if he owns property and says he has a business there and he wants to expand the business and he wants another variance, does he have to prove anything? Say he says he had a business there and someone else said he didn't, what does he need to prove he had a business there?

Nadine Bell said under the non-conforming uses is states there is a list of all the non-conforming uses at the time the ordinance was amended. The property owner bears the burden of proof.

Chairman Beggs asked if there was anything else that anyone wished to bring before the Board tonight. There wasn't anything.

**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 10/9/2007