

Minutes of the November 13, 2007 Zoning Board of Appeals Meeting Minutes 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 (Arrived 8:07 p.m.)
Robert Drumm, Member
Daniel Kuhns, Member
Jerry Doolittle, Member
Christine Keenan, Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, ZBA Attorney
Anne Sweeney-Nakas
Jim Nakas
Tim Gilchrist, Applicant
Shannon Cunningham- Southern Hills
Tim Frateschi – Attorney for Sheila Kelley
Lana Capri, Applicant
Ryan Smith, Applicant
Karen Hughes
Ralph Lamson, CEO

Acting Chairman Doolittle called the meeting to order at 7:35 p.m. He advised the Chairman will be a little late.

Everyone introduced themselves.

CASE # 597 - Public Hearing for application of Southern Hills Preservation Corp. for a front yard variance for a sign to be placed at 2383 Route 11 South approximately ½ mile south of the Route 11 and Route 20 intersection in a Hamlet District. (Tax Map No. 17.-03-15.0)

Shannon Cunningham said they are a 501C3 not-for-profit organization. They rent at the current facility that Ryan Smith owns and they would like to place a sign approximately 30' from the highway center line. It will be perpendicular to the road. It will be no greater than 6' in width, 8' in height and 6" in thickness.

Acting Chairman Doolittle confirmed it will not be a lit sign.

Shannon said confirmed it will not be lit.

Acting Chairman Doolittle said it will be 30' from the highway center line which would give us closer to 15' of visibility when someone passes this sign before they pull onto the highway to check for oncoming traffic.

Acting Chairman Doolittle asked for any comments in favor of this application.

Ryan Smith was present and said their proposal is completely logical for the building and he is pleased with it.

Acting Chairman Doolittle asked for any comments against this application.

There were none.

Acting Chairman Doolittle asked the Board for any questions or comments.

John Langey noted the actual size of the sign would be 3' x 5'. Any addition to this size would require the applicant to come back before this Board. The posts are 6' apart and 8' high.

Acting Chairman Doolittle would agree that it's in line with what else is up and down the highway. It won't be obtrusive or restrict the line of sight.

Member Kuhns asked if the sign was lit.

Shannon said no.

Member's Drumm moved and Keenan seconded the motion to close the public hearing and to appoint this Board as lead agency, this is an unlisted action and a negative declaration in the SEQR process and to grant a front yard variance to Southern Hills Preservation Corp. on behalf of Ryan Smith for a sign pursuant to the drawing of a 3' x 5' sign at 2383 Route 11 South and if they seek to increase the size of the sign they will have to return to this Board for approval. Motion passed unanimously.

Acting Chairman Doolittle asked if there were any corrections or additions to the October 9, 2007 Meeting Minutes. Member Kuhns had one correction. On page 2 it should read "4" x 4" on ends" in place of "4' x 5' on ends".

Member's Kuhns moved and Drumm seconded the motion to accept the October 9, 2007 Zoning Board of Appeals Meeting Minutes as corrected. Motion passed unanimously.

CASE # 598 - Public Hearing for application of Tim Gilchrist for a Specific Permit to operate a retail store/gift shop at 2449 Route 11 South approximately 1/8 mile south of the Route 11 and Route 20 intersection in a Hamlet District. (Tax Map No. 018.-01-14.0)

Tim Gilchrist was present and said they are proposing to open a retail store in the building at 2449 Route 11 in an area which is currently being used as a tanning salon. The tanning salon is moving.

Acting Chairman Doolittle said the applicant advised the approximate square footage at the last meeting.

Tim said the retail footage is approximately 1,900 square feet.

Acting Chairman Doolittle said the applicant is proposing two businesses in that building and we are only talking about the retail store at this time. It's currently a commercial business in that building. The applicant is not proposing any exterior changes to the building.

Tim said that is correct.

Acting Chairman Doolittle confirmed the principal entrance will be at the rear of the building. It was suggested he make the side entrance into the driveway as an emergency exit.

Tim said that is correct.

Acting Chairman Doolittle said we have heard back from County Planning and they decided there are 26 parking spots and that is what is needed. He asked for any comments in favor of this application.

Lana Capri is the current owner of the building and spoke in favor of this and believes it will be an asset to the community.

Member Drumm asked about two exits.

John Langey said they will be using existing entrances/exits for ingress and egress. He said this was referred to the Planning Board as required and they had no concerns regarding this use and described it as low impact and felt it was appropriate for the Hamlet District.

Acting Chairman Doolittle asked for any comments opposed to this application. There were none.

Acting Chairman Doolittle asked for any questions or comments from the Board. There were none.

Member's Drumm moved and Kuhns seconded the motion to close the public hearing. Motion passed unanimously.

Member Kuhns moved and Keenan seconded the motion to appoint this Board lead agency, this is an unlisted action and a negative declaration in the SEQR process and to grant Specific Permit approval for a retail business to be run at 2449 Route 11 South. Motion passed unanimously.

CASE # 599 - Public Hearing for application of Tim Gilchrist for a Specific Permit to operate a professional web design office at 2449 Route 11 South approximately 1/8 mile south of the Route 11 and Route 20 intersection in a Hamlet District. (Tax Map No. 018.-01-14.0)

Tim Gilchrist said it will be a private place to conduct business on the computer and over the telephone. There is potential for someone to want to stop by in the office but historically most of this work has been done over the telephone or at the other persons business.

Acting Chairman Doolittle asked the applicant for the number of employees. Tim said overall there would be 3.

Acting Chairman Doolittle believes the total footage of the building is about 2,700 square feet on this floor and he will be using a total of 2,100.

Tim said there are halls, stairways, etc. that will not be used for the businesses.

Acting Chairman Doolittle asked for any for any comments in favor of this application. There were none.

Acting Chairman Doolittle asked for any comments opposed to this application. There were none.

Member's Kuhns moved and Drumm seconded the motion to close the public hearing. Motion passed unanimously.

Acting Chairman Doolittle asked the Board for any questions or comments.

Member Kuhns believes this is an ideal application for the building and the size of the lot.

Member Drumm moved and Kuhns seconded the motion to appoint this Board lead agency, this is an unlisted action and a negative declaration in the SEQR process and to grant Specific Permit approval for a website design office to be run at 2449 Route 11 South. Motion passed unanimously.

**CASE # 600 - Sketch Plan Conference continued for Sheila Kelley
regarding interpretation of non-conforming uses.**

Member Drumm recused himself from this application as he knows people from both families that are directly involved in this application. Although he feels he could make a fair decision. He doesn't think it would be fair to himself, either party directly involved or ethical to remain on the Board for this application.

Mr. Frateschi was present to represent the applicant, Miss Kelley. At the last meeting they had some questions for him. Ms. Kelley has a residence on the property and there is a barn to the rear of the property. She runs a construction office out of the barn. Their argument is that there has always been a business run out of the barn. Her grandfather ran a business out of the barn since at least 1967. Her continued use would fall under the non-conforming use in the Zoning Ordinance. He spoke to Joan Belmont who was Tom Belmont's wife about the issue of what the business Mr. Belmont operated out of the barn. She has provided an affidavit regarding the business he ran out of the barn. He provided an air conditioning and appliance service out of the barn. He did this from 1967 until his death in 2005. He also has a letter from people who were employees and were customers of this business. Ms. Kelley has operated her construction company out of the barn since 2006. There was never a break in the business use. Mrs. Belmont indicated there was never more than 1 employee at a time for Mr. Belmont. Mr. Belmont apparently was an appliance repair person for Sears during the day and this was a business he ran out of his home at night or on the weekends. They are still working on a survey. This property was never surveyed because it was passed from family member to family member. There was a question about construction material that is being housed in the barn right now and whether the construction material is related to Springhill Construction Company. Ms. Kelley indicates that all the material is being used for personal use or provided to friends. There are no construction projects in New York State that would be using these materials in or around this area. As far as trucks coming in to use these materials on a project site, it wouldn't happen.

Member Keenan asked why the office is in New York State.

Mr. Frateschi said that is where Jason and Sheila live. The office just takes phone calls and stores records.

Acting Chairman Doolittle asked if Mr. Jeffery ran a business out of there before Mr. Belmont did.

Mr. Frateschi said yes. Mrs. Belmont said he ran a roofing business out of the barn until his death in 1967. She has personal knowledge of this.

Acting Chairman Doolittle said the Board has a photo of the barn showing the construction materials inside.

Mr. Frateschi said it appears to be an accurate picture of what's in the barn. There are new doors that cover this now.

Chairman Beggs arrived.

Mr. Frateschi said many of these materials are going to be used on things that will be related to the farm or the house.

Chairman Beggs asked when the picture was taken.

Anne Nakas said just before the doors went on that cover the material up. Ms. Kelley labeled it construction material herself at a previous meeting. She was home the day it was delivered on a flatbed truck too big to fit in the driveway.

Member Doolittle asked if the photo corresponds to the date she mentions in the letter.

Anne said in the letter she sent to Ralph Lamson today she asked for the construction material to be removed. Even if it's being used for friends, it's led to a great increase in traffic taking it off the property for whatever reason. If the construction material is owned by the company, it should be housed somewhere else.

Chairman Beggs noted the picture is dated 10/02/07 on the back of it.

Mr. Frateschi said they are not disputing it's construction material. He thinks Ms. Kelley's position is that the material is owned by her and she has a right to store it on her property. He submitted affidavits for the record.

Member Kuhns asked about the company's incorporation.

Mr. Frateschi said Springhill Construction is incorporated in the state of Missouri.

Member Kuhns asked who the stockholders of the company are.

Mr. Frateschi didn't know the answer to this.

John Langey thinks at a previous meeting he thinks Mrs. Kelley indicated that she was president of the company at one time. He believes she holds a corporate office.

Mr. Frateschi believes it's either Ms. Kelley or Jason.

John Langey asked what Springhill Construction builds.

Mr. Frateschi said commercial projects.

Member Keenan asked if the business rents the barn space.

Mr. Frateschi said Ms. Kelly is an officer in the corporation and he doesn't think it's rented.

Member Keenan asked if Jason Olander lives on the property as well.

Mr. Frateschi said yes. Most of the week he is out of town on business but that is his residence.

Member Doolittle asked if Springhill Construction has anything to do with horses that are there.

Mr. Frateschi said they are not part of the business. That is separate from the office itself.

John Langey asked how much square footage the office takes up in the barn.

Mr. Frateschi would estimate 1,200 ± square feet on the second floor.

Member Keenan asked if they have current building projects for the property that they will actually work on now with the construction material.

Mr. Frateschi isn't aware of any. They just finished some fencing and that type of thing.

Member Keenan said with a barn full of construction material she is looking to see what they plan on constructing.

Chairman Beggs asked basically what type of business activity does the applicant wish to conduct at this location?

Mr. Frateschi said an office which entails administrative activities. This would include phone calls, filing related to projects they are working on. That is essentially all they are using the office for.

Member Kuhns asked when the office became active at this premises.

Mr. Frateschi said 2005. She was doing a part of it in the house and part of it in the barn.

Member Doolittle asked John Langey if Ms. Kelley had an office in the house and moved it to the barn, does it constitute changing anything.

John Langey said he will have to study the Ordinance.

Member Keenan asked if changing from an appliance repair business to a construction office makes a difference.

John said at the last meeting the applicant stated there was a repair business going on there at some point when this construction office started, they believe it became a less obtrusive business when it became a construction office. Because they believe it's less obtrusive, they feel it isn't something new or more excessive than what was there before.

Mr. Frateschi said he submitted a letter stating their legal argument on this.

Chairman Beggs asked the total square footage of the property as far as the home and office combined.

Mr. Frateschi said he can't answer that question. Once the survey is prepared and provided, it will have the exact figures.

Chairman Beggs said he is looking at the percentage of the existing footprint.

Mr. Frateschi said it would be smaller. The house and barn are very large and the office use is minimal compared to the overall size of both buildings.

Member Kuhns said at one of the meetings there was discussion about the office being constructed in the barn. Does he know when that occurred.

Mr. Frateschi believes in 2005.

Member Kuhns asked him to verify this.

Member Doolittle asked what we have on home occupations.

John Langey said their position is that this is a pre-existing non-conforming use. He read the definition of home occupation from the Zoning Ordinance and the information on non-conforming uses.

Member Doolittle said their contention is that a home occupation wouldn't apply anyway.

Mr. Frateschi said they are saying it's a non-conforming use and not a home occupation.

Member Kuhns said the construction supplies being stored there,, would it be possible to see the receipts of who purchased them? He would like to see some evidence of ownership.

Chairman Beggs asked if this were considered a non-conforming pre-existing use, does this Board have the jurisdiction to control what type of activities take place there?

John Langey referred the Board to the section of the Zoning Ordinance that deals with non-conforming uses. It seems to say you are not supposed to change uses. Counsel for the applicant is saying uses of lighter nature would be less offensive and therefore should be allowed. There must be a showing that the business was of continuous use over the time period.

Member Doolittle said this has been an ongoing thing. Can someone tell him how this started and where it has gone?

Ralph Lamson said it started quite awhile ago with a complaint from the Nakas's to him. He talked to Ms. Kelly and she advised she was running a business. They looked at the home occupation which she didn't fit and it ended up in court.

Chairman Beggs asked Ralph to put together a sequence of events, time-line and what's taken place for the Board to review. If the Board had the facts before them, he thinks it would be helpful.

John Langey said the time-line will be helpful. The Board will keep in mind that the burden of proof is on the applicant to prove the existence of a pre-existing business. Both people in favor of and opposed to the application will have an opportunity to give testimony. The Board can make a decision after the public hearing is closed and their decision must be supported by specific findings based on the material received and heard.

Mr. Frateschi said he encourages the Board to read his letter of 10/5/07 as it advises some changes made in the code as it relates to non-conforming uses. The Town Board has determined a change of use is no longer determined by whether the non-conforming use is continued. The code now just reads the non-conforming use cannot be enlarged upon, expanded, etc. The building is not to be expanded on or extended. It's less than what was on site before. The Zoning Ordinance used to read that it could not be changed to another use and it doesn't read that way any more.

Member Doolittle asked what course it was taking when it went to court.

Ralph Lamson believes it was for running a home occupation outside the home. The non-conforming use issue came up after the court case.

John Langey said that is why it came before this Board.

Chairman Nakas said written correspondence may be received pertaining to this application too.

Jim Nakas said if we are talking about a private business, shouldn't there be receipts, tax records, invoices, etc.? There's a business and there's fixing people's air-conditioners once in awhile in the barn. He would like to see some evidence that a full-fledged business occurred. If what's there now is less offensive and this is a full-fledged construction company then what was there before had to be bigger than a full-fledged construction business and there should be records to support that.

Member Kuhns asked if a business started prior to zoning, does it grandfather in as long as it's continuous? If something else steps in during 2005, is it acceptable?

John Langey said lets say you had a restaurant in a residential area in 1950. Zoning comes occurs during 1967 and the restaurant runs for another 10 years and now it's going to be a manufacturing place. Depending on how you read the Ordinance, it reads you can't switch from one non-conforming use to another. To make the argument and cite case in the applicants paperwork, it states they can go to something that is less obtrusive. He thinks that is the point that Nakas's are trying to make.

Member Kuhns thinks we already asked for this information at the last meeting. He said suppose the non-conforming business is a motel and the owner decides to get a liquor license and is going to primarily be a bar and serve booze, what happens then?

John said that is a good question. You can up it just a bit.

Mr. Frateschi said there is a case law and it's how you view the intensity..

John said yes but there is also the Ordinance.

Mr. Frateschi said intensity is not use. It's a non-conforming use. They are talking about intensity when they talk about enlargement. A business is an undertaking or an enterprise to make profit. In terms of business records, he has asked for them. Ms. Kelly is advising she will look for them. In her affidavit she is stating a business was run out of the barn. What defines a business?

Member Doolittle said when it comes to this Board making a decision on this case, what is necessary? It a majority vote required?

John said they will need 3 out of 5 Members.

Member Doolittle said since one Board Member has removed himself from this case, does it matter?

John said you will have to have a majority of the constituted Board.

Chairman Beggs asked if it wouldn't be in order in a case like this to call upon the Alternate Member to sit on the Board.

John said to make sure the Alternate Member has all the information.

Chairman Beggs would request the Alternate Member be notified and requested to sit on the Board for this application.

Karen Hughes asked does the fact that Mr. Belmont's business was technically abandoned when he became ill and could not work and became hospitalized and then died? Will that have bearing on whether or not this is a new business starting at a new time?

John Langey said they are saying it never was abandoned.

Karen said it was Mr. Belmont's business vs. Sheila Kelley's business.

John said they are saying Sheila's business is less intense. Under our law, does less intense matter?

Chairman Beggs requests that the attorney for the applicant to justify how specifically does this end up being less intense than what the previous business was.

Mr. Frateschi said an office with one employee who goes to the office to answer the phone, file, etc., and that person leaves at the end of the day is a less intense impact on the neighborhood than if you have an air-conditioning and appliance repair shop where people are bringing their appliance in to be repaired. Noise as it relates to the repairs is less in an office than an appliance repair business.

Anne Nakas said the attorney is not a neighbor.

Mr. Frateschi said he was asked what he meant by intensity. The impact on the neighborhood would be far less with this than neighbors who bring in an appliance to be repaired.

Jim Nakas asked if we are now severing the office in the barn from other activities that go on at the location that are associated with the construction business. The way it is being presented here, all he is hearing is office and he's not hearing anything about construction company activities.

Anne Nakas said she brought this up at the end of the last meeting and she was directed to take this back to Ralph Lamson and copy the Zoning board of Appeals and Town Board.

John Langey said that is because the application that was submitted asked for recognition of the previous use being a pre-existing non-conforming use.

Anne Nakas said their frustration is that they only hear about the office and indeed it's the other activities that go on that don't get address that are the most bothersome.

John Langey thinks the applicant is claiming the construction material is not related to the business but this is something Ralph Lamson will have to check out. If it's related to the business he will have to have them remove it unless they come back in and say they have always had construction material there. He though the heard their counsel say construction material for the business should not be allowed there.

Mr. Frateschi said he is not disputing that the material might at one time have been owned by the construction company and is now owned by Sheila Kelley. Those construction materials are being used by her on that property.

Anne Nakas would like to know if the people who come and pick the material up are paid for by Springhill Construction. She knows some of the people are Springhill Construction workers. The problem is that with the construction business there, it gets very murky which is part of the problem regarding the increased activity at the site. The office, whether in the house or in the barn with one person working in it is just an office but it has been the other activities as this is the only site Springhill Construction maintains and she thinks the lines have gotten blurred as to when the employees are working for the construction company and doing private work and using leftover construction material it makes it less able to separate out.

John said what's suspected is that the barn has become a clearing house for construction materials. If Ms. Kelley is selling these materials whether under her name or some company name, it would be improper.

Mr. Frateschi agrees that it would be improper but he doesn't think they are doing this.

Bob Drumm believes their original request was for two full-time employees which he thinks is much more intense than one person working evenings or weekends.

Jim Nakas thinks for 1 ½ years there were 2 full-time employees working in the office.

Mr. Frateschi said there is one now.

Bob Drumm thinks even one full-time employee is more than someone working evenings or weekends.

Member Doolittle said there can be leftover construction material on any job. If it's a multi-state business, where is the general place the materials, equipment and machinery is housed?

Mr. Frateschi will find this out. He doesn't think anyone is claiming there is equipment.

Member Doolittle said he hasn't heard equipment but he has heard materials.

Member Kuhns thinks the Board also has to recognize the fact that business conditions change from time to time. There could be one employee today, two next week, three the following week and none after that. There are no guarantees in business. That is something to be aware of.

Member Doolittle asked if the one full-time employee is besides Sheila.

Mr. Frateschi said yes.

Anne Nakas said and Jason.

It was noted this makes 3 employees.

Chairman Beggs asked if there were any other questions by the Board at this time. There were none. He asked Mary Jo to send the Board Members and the Alternate Member copies of the affidavits and letters received. The Board can continue the sketch plan conference in December.

John Langey asked Ralph Lamson to let the court know that the applicant appeared and information is requested so it's doubtful this will be resolved in December.

Chairman Beggs would encourage anyone who has documentation that would like the Board to review regarding this application to deliver it to the Town Clerk and she will distribute it to the correct people.

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

The Zoning Board of Appeals Meeting adjourned at 9:10 p.m.

Respectfully submitted,

Mary Jo Kelly
Secretary

Adopted 12/11/07 with following corrections:

Page 1...first paragraph "sing" should be "sign"

Page 2....16th paragraph "form" should be "from"

Page 5..18th paragraph "form" should be "from"

Page 7...6th paragraph "b" should be "be"