

Minutes of the December 11, 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  
Daniel Kuhns, Member  
Jerry Doolittle, Member  
Christine Keenan, Member  
Jim Butkus, Alt. Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, ZBA Attorney  
Anne Sweeney-Nakas  
Jim Nakas  
Ralph Lamson, CEO  
Robert Drumm, ZBA Member  
Mr. Frateschi, Attorney  
Sheila Kelley, Applicant  
Jacqueline McIntosh

Chairman Beggs called the meeting to order at 7:40 p.m. Everyone introduced themselves.

Chairman Beggs asked if there were any corrections or additions to the November 13, 2007 Meeting Minutes. The following corrections were noted:

Page 1...first paragraph “sing” should be “sign”  
Page 2....16<sup>th</sup> paragraph “form” should be “from”  
Page 5..18<sup>th</sup> paragraph “form” should be “from”  
Page 7...6<sup>th</sup> paragraph “b” should be “be”

**Member Kuhns moved and Alt. Member Butkus seconded the motion to accept the November 13, 2007 Zoning Board of Appeals Meeting Minutes as amended. Motion passed unanimously.**

**Continuation of Sketch Plan Conference for Sheila Kelley regarding non-conforming use interpretation.**

Chairman Beggs noted Member Drumm has recused himself from this case. He said the Board has asked for quite a lot of information in the past and has not received any.

Mr. Frateschi said they left affidavits and letters from customers of the business. They are saying this follows as a non-conforming use. At the last meeting the board asked to be provided with who the owners of Springhill Construction are. The owners are Jason Olander and Sheila Kelley. They are the two shareholders of the operation. The office was constructed in the barn in 2004. It was before her grandfather died. He submitted pictures of the barn. He submitted a letter from SP1 Building Construction, Inc., stating that they provided this lumber for Sheila Kelley’s individual purposes. She was planning on building a house which she never did. He submitted a list of jobs that Springhill Construction has done in the last couple of years. The only one that took place in New York was in Albany. Sheila has receipts for the construction material. The Board would have to look at the material to see what is there. It’s Ms. Kelley’s testimony that none of that material was for Springhill Construction business and it was not purchased for that intent. It’s for her personal use. They would be happy to have Mr. Lamson come look at the material and determine what is actually construction

material and shouldn't be on the premises. If he feels it's all construction material that would not be used for her personal use, they would remove it.

Sheila Kelley said there is no way someone will driver 1,400 miles to store leftover stuff in New York. Most of their jobs are in Florida, Alabama, etc.

Mr. Frateschi said over the past 2 weeks, he has been in discussion with the attorney for the Zoning Board of Appeals. He was hoping they could come to some kind of agreement between the Board and the neighbors who are adjacent to the property. He doesn't know where we stand with that process. Their position continues to be that the businesses that have been on the property are continuous businesses whether it be Ms. Kelley's grandfather or great grandfather. The intensity of the business she is running there now is less intense than the businesses that were run on the property before. She wants to run the office of the construction business in the barn.

Chairman Beggs said the Board asked for a survey of the property.

Mr. Frateschi said he spoke to the surveyor last week. He is having a difficult time finding historical data to fix the boundaries. It's a 20 acre parcel of land. The cost of this kind of survey will be extraordinary. In line of his recent conversations with John Langey, it really doesn't affect the issue that this is a non-conforming use. He put the surveyor on hold to see if Ms. Kelley had to spend these types of funds.

Member Doolittle said they have various letters stating they were customers of the business or worked for Mr. Belmont for certain time periods. There's nothing the Board has that states exact time periods. He thinks the Board asked for some kind of financial records showing the business was operating at certain times.

Mr. Frateschi said Ms. Kelley's grandmother has lived on the property since 1967 and submitted a sworn affidavit stating her husband ran a business for as long as she has been on the property. Ms. Kelley and her grandmother have tried to locate records of the business but he past away a couple of years ago and they have not been able to get those records.

Alt. Member Butkus said Mrs. Belmont states it was a part-time business and not full-time.

Mr. Frateschi said she has one full-time employee. He doesn't think the code makes a distinction between part-time and full-time business.

The Board thinks it mentions expansion.

Mr. Frateschi said this is physical expansion.

Member Kuhns doesn't interpret it that way.

Chairman Beggs said there is no survey or building permit for the office.

Mr. Frateschi said the office is in the original structure of the building. There was no expansion of the building.

Sheila said it was expanded for the horses.

Alt. Member Butkus said any time you expand on a building you should get a building permit

Mr. Frateschi said that is not what he is representing before the Board. He is discussing the office only as it falls within the building.

Chairman Beggs said the Board would require a survey showing location of buildings on the property if they were going to consider a non-conforming use.

Mr. Frateschi asked why.

Chairman Beggs said because that is the way the Board does business. They do business based on facts and not hearsay. The Board doesn't know where the buildings are, what the setbacks are and how it affects the neighbors.

Mr. Frateschi said so the Board will require a survey.

Chairman Beggs said absolutely.

Mr. Frateschi asked what other hearsay he was referring to.

Chairman Beggs said statements that were made about records not being completed.

Mr. Frateschi asked how that is hearsay.

Chairman Beggs said we need facts to work with.

Sheila said her grandfather didn't keep records or have a business certificate. Since he passed away her grandmother didn't keep a lot of stuff. Financial statements would be impossible.

Anne Nakas said they have never disputed the facts that Tom Belmont repaired things for people. They have never argued against it. Tom did repair things. Their premise is that because he worked full-time for Sears and this very often included Saturdays, any repair work was done around his full-time job. Therefore, it was limited in scope because of the time he had available to give to that work. Tom very often went to peoples homes to do the work because typically people don't drop of their large appliances to be worked on. The work was never to a level when Tom had his business that the office is at now.

Mr. Frateschi said no one disputes that there was a business whether it was part-time or full-time. You may say it's hearsay but everyone agrees to that. He doesn't know where the dispute arises. The intensity of the business seems to be the issue and whether the business Tom Belmont ran was as intense as the business that is being run out of there now. He would submit to the Board that an office is being run out of the barn today and has one full-time employee. There is question as to whether the construction material in the barn is part of the construction business and they are saying it is not.

Anne Nakas said Ms. Kelley referred to it as left-over construction material from a job in one of the Carolina's. That is where her impression came from as it's the way Sheila characterized it at a previous meeting.

Mr. Frateschi said either the Board agrees the construction material is for her personal use or they don't. If you think it belongs to Springhill Construction then he guesses they will have to remove it from the property. The information they submitted to the Board tonight shows it was not part of Springhill Construction. If they aren't doing any job within 100 miles of LaFayette, why would they want to keep their construction material here.

Member Doolittle said we are not discussing whether this is a home occupation or use variance. The Board is only interpreting whether this is a non-conforming use that previously existed.

Mr. Frateschi said that is his understanding.

Member Doolittle said if it was determined that this was not in compliance for whatever reason, your next step would be to come back for a use variance.

Mr. Frateschi doesn't think so.

John Langey said their options would be to ask for a use variance, ask for a change in the code to allow this use, or to appeal the Board's decision to a higher court. The Board will not be able to make a decision tonight as it will have to go to public hearing first.

Member Keenan asked if there is any other cases that would be similar to this.

John Langey said there was the Watson case several years ago. He explained what the Watson case was about. They stated they had always sold agricultural products from the property. They moved their business from Route 11 back to their site on

Sentinel Heights Road. The Town was upheld in court until the Watson's filed to be in an Ag District which removed much of the jurisdiction from the town's hands. The applicant would like the Zoning Board of Appeals to recognize a pre-existing non-conforming use as they believe there has been a continuous non-conforming use and they would like you to recognize Ms. Kelley's business as a continued non-conforming use.

Member Kuhns thinks what keeps coming into play is the expansion of a non-conforming use. Is the law or code written that expansion only means physical expansion?

John said it refers to going from one non-conforming use to another. There is expansion as to level of activity and expansion as to whether it's a different non-conforming use all together. The Board can make a determination based on the facts and can then make a ruling. He believes the applicant feels they have submitted enough information for this. It can go to public hearing and then the Board sits down and evaluates every fact and what it means. You apply the facts to the law and make a decision. If there's a piece of information you wish you had but they haven't submitted, you can refer to that.

Member Keenan confirmed that the office was about 1200 square feet.

Mr. Frateschi said there's two rooms of 15' x 20'.

Member Keenan asked how many parking spots are there.

Sheila said 6-7.

Mr. Frateschi said one issue that was brought up was about various trucks or cars being parked on the property. Ms. Kelley owns up to 7 different vehicles. It wouldn't be unusual to see that many vehicles parked on the lot.

Chairman Beggs asked if you could get any dimensions of the office.

Alt. Member Butkus noted Sheila's business certificate was issued in Missouri. When did she move to New York?

Sheila said she had an apartment there as she had a job there but has always had her residency here.

Alt. Member Butkus confirmed she kept her New York drivers license and was able to vote in New York State.

Sheila said yes.

Anne asked if the 6-7 vehicles are owned by Ms. Kelley or leased through Springhill Construction.

Sheila said they are titled to her. She doesn't lease them through the company. You insure them in the company's name which is on the insurance card as well. One vehicle just left for Florida 2 days ago. Her brother drove it down but it had nothing to do with the business..

It seems unusual that someone would own 6-7 vehicles.

Mr. Frateschi said he has 4 registrations that she and Jason are on personally. The insurance names the company as an additional insured.

Anne asked if other employees drive the vehicles.

Mr. Frateschi said other people may drive other people's vehicles and there is nothing wrong with that.

Chairman Beggs said she stated that from time to time one might be used to visit a job location.

Sheila said if they drive from here to Florida, she wouldn't drive her own vehicles. They are not used to haul material or anything.

Chairman Beggs said in a previous meeting the Board asked for a floor plan for the office.

Sheila said she has submitted this twice.

Mary Jo looked through all of her records and could not locate the floor plan of the business. The only drawing was of the property with notations of where things were on it which is the drawing Chairman Beggs and the Board have.

Chairman Beggs asked Member Drumm if he can remember seeing anything like this at a previous meeting.

Member Drumm said no. The only plan he remembers is the one of the barn, house, etc. which the Board has.

Mr. Frateschi said they will provide this to the Board.

Chairman Beggs asked the Board if they had any further questions or comments on this. There were none

Chairman Beggs said he is trying to collect as many facts as possible so the Board can make a decision based on facts. We are missing a few details. He asked counsel if he had any other thoughts.

John said they have offered the information they have so you are probably ready to go forward and schedule a public hearing if the Board would like to.

Chairman Beggs said if the applicant can get the survey and floor plan in to Mary Jo in time to schedule one, it could be held in January. The survey should show parking, buildings, property lines, etc.

Mr. Frateschi said the Board is really looking more for a site plan then.

Chairman Beggs said no. The reason to have all this information on a survey is that it can't be disputed as it's prepared by an independent surveyor. The Board looks at septic location, well, etc. A detailed survey would be very important.

Chairman Beggs asked if the whole business is running out of the back office.

Sheila said she has her paperwork all over the place. She doesn't sit down at a computer. The horses are not really an in-office type of business.

Member Keenan asked how many horses she has.

Sheila said 10 in her name.

Member Keenan asked if she boards horses.

Sheila said she has one person that she lets Board her horse.

Member Keenan asked if she pays to board her horse there.

Sheila said no.

Member Keenan asked if this person repays Sheila in labor.

Sheila said yes.

Mr. Frateschi said there are no horses at this location right now. A couple will be coming back shortly.

Member Keenan asked if Sheila breeds and sells horses.

Sheila said yes.

Member Keenan confirmed she breeds and sells horses but does not board horses there.

Sheila said yes.

Chairman Beggs said the next step is to get the documentation. If we get the information in time, it can be scheduled for a public hearing in January.

Anne asked what the public hearing is for.

John Langey said the town will place a notice in the paper and it will be sent to the neighboring property owners. The notice will state anyone can come and speak in favor of or against this application regarding a non-conforming use. That is all the public hearing can be for.

Anne asked if a business can be in a barn here, can a business be in another barn in the town?

John said that would be factually driven. Each case would have to be a review of the facts.

Member Doolittle said the Zoning Board of Appeals decision could set a precedent but the public hearing would not.

Anne said as a resident she would want to be sure she came and was heard at the public hearing.

John said as far as precedent goes, each case factually could be different. When a Board makes an interpretation of how they read the law, that could set precedent. We don't know what determination the Board will be making yet so we don't know if a precedent will be set or not. Maybe some other people will want to attend the public hearing.

Mr. Frateschi said in terms of the precedent setting, they have one example of a non-conforming use in the Watson Greenhouse application.

The Board said no.

John said the Watson's proved they had been selling vegetables and the Board said they could continue to do the vegetables but not the necklaces, gloves, scarves, etc.

Mr. Frateschi said he would turn to the C.E.O. to see if there was other precedent of this by the Zoning Board of Appeals.

Ralph Lamson said he couldn't think of any.

Mr. Frateschi asked if there was another non-conforming use recognized by the C.E.O. Office.

Ralph couldn't think of one off the top of his head. He can look through his files.

Mr. Frateschi asked if the Board has ever denied a request for a non-conforming use.

John said they don't get too many of them.

Chairman Beggs said there have been some.

Anne is confused as to how we are still here in terms of the expansion. The C.E.O. in July determined this was exceeding what Tom Belmont carried out. This was in a letter to Sheila Kelley stating she far exceeded what had gone on previously. She is confused as to why we are here.

Sheila said that was about two employees as her grandfather only had one.

Anne believes the letter spoke to the scope of what is going on now.

Ralph said that was in follow-up to what this Board decided.

Anne said the letter was from Ralph Lamson.

Mr. Frateschi believes that was regarding a home occupation.

Chairman Beggs said if they can get the information requested to Mary Jo by the end of December, this can be scheduled for a public hearing in January.

Chairman Beggs asked if the extension of the barn was related to this business.

Ralph said no. It's for the horses.

Chairman Beggs asked if there should have been a building permit issued.

Ralph said yes. He will look into the stables located off the back of the barn.

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

The Zoning Board of Appeals Meeting adjourned at 8:51 p.m.

Respectfully submitted,

Mary Jo Kelly  
Secretary

Adopted 2/12/08