

**TOWN OF GOSHEN, ORANGE COUNTY, NEW YORK
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING**

June 4, 2002

Members Present :

Donna Roe, Chair
Malcolm Booth
Priscilla Gersbeck
Michael Wilson

Also Present:

Brian Morgan, Esq.

I. Call to Order

Chair Roe called to order the May meeting of the Town of Goshen Zoning Board of Appeals at 7:31 p.m.

Chair Roe announced that the next Zoning Board of Appeals work session will be at 7:30 p.m. on June 19, 2002, its regular meeting on June 25, 2002 at 7:30 p.m., and the filing deadline for applications would be Friday, June 14, 2002.

Chair Roe announced that the first item on the agenda will be the continuation of the Public Hearing for Panstar Propane Corp.

II. Public Hearing - Continued

A. Panstar Propane Corp. - seeking variances from Section 97-47 “building enclosure required”, and Section 97-64B lot area and lot width in order to construct and maintain propane bulk storage tanks in an I Zoning District: Tax Lot No. 17-1-12

Jay R. Myrow, Esq., of Fabricant and Lipman and Nick Panebianco were present and representing the applicant. Mr. Myrow stated that this is a continuation of the Public Hearing, which was held in April due to a referral to the County. Mr. Myrow was notified today that the County did not intend to remark on the referral because it was an area variance. Mr. Myrow went on to give a synopsis of the application.

This is an application for area variances for the installation of two propane storage tanks on Quarry Road, near the intersection of Pulaski Highway. The variances are requested for a lot area and lot width. The lot is a substandard lot and is approximately 1.7 acres; two acres are required under Code. The lot width that is required is 200 ft. and the maximum at any point on the lot is 187 ft. Arguments were submitted in the application and it was felt that the variances

are not substantial and are certainly not created by the applicant. The other variance that was requested was that the propane tanks not be enclosed in a building. Although the use is permitted, Code requires that the use be within a building. Attached to the application was documentation from the National Fire Protection Association, which governs the installation of these tanks, specifically requiring that they not be enclosed in a structure for safety purposes. Therefore, the request is that the enclosure not be by building, but by screening which is required by the ordinance, and will be an opaque fence. It is the feeling that none of the variances are either substantial or self-created.

Chair Roe asked if any of the Board members or any one in the audience had any questions. There were none.

Chair Roe asked if there was a motion to close the Public Hearing.

Mrs. Gersbeck made a motion to close the Public Hearing.

Mr. Wilson seconded the motion.

All in favor. Aye. Motion carried.

Mr. Morgan asked Mr. Myrow if he had a prepared Negative Declaration. Mr. Myrow stated that he was not sure one was needed for an area variance. Mr. Morgan stated that because this is not lot line or setback variance, one was needed.

Chair Roe stated that the application could be held over, as the next meeting was only in three weeks. Mr. Myrow asked if the Board could vote subject to the completion of the Negative Declaration. Chair Roe stated it was not the policy of the Board to vote subject to any conditions of an application.

Mr. Myrow asked if Mr. Morgan had a form, Mr. Morgan did. Chair Roe tabled the vote until later in the meeting, allowing Mr. Myrow time to fill out the Negative Declaration.

Chair Roe announced that the next item on the agenda would be the Public Hearing for Douglas Tuthill.

II. Public Hearing

A. Douglas Tuthill - seeking relief from Section 97-63.3 (B)(1) pertaining to 4 acre minimum lot size in a PBD Overlay Zone, or Section 97-44 pertaining to permitted use in an I Zone, for a veterinarian hospital, located on NYS Route 17A in an I/PBD Zoning : Tax Lot No. 18-2-14

Mr. Cecil Foti of Silvers Engineering was representing the applicant. Mr. Foti stated that the applicant was seeking a use variance or area variance identified as Tax Lot No. 18-2-14, which is in the Karyptown Subdivision, Lot B-8. Dr. Tuthill is seeking to put up veterinarian hospital on

a two-acre lot, which is not an allowed use in an Industrial Zone. This area is zoned Industrial with a PBD Overlay Zone. Veterinarian hospitals are allowed in the PBD Zone, but in order to achieve this, four acres are needed. The lot is only two acres. The use of an office in this area would be in keeping with the character of the area, as there is a service station on the corner, there is also a storage unit area and Mr. Karpy has his office's there. Therefore, the applicant is seeking either/or a use variance in the Industrial Zone or an area variance in the PBD Overlay Zone.

Mrs. Gersbeck asked if there would be animals kept outside. Mr. Foti replied that there would not be any animals kept outside, but there is an exercise area, which is 20 ft. x 40 ft. Since it is a veterinarian hospital, animals will be kept over night inside. Mr. Foti referred to Page 3 of 5 of the maps, which shows the layout and inside (exercise) runs.

Chair Roe asked if Dr. Tuthill was going to board animals there as well. Mr. Foti replied no, animals will only be held over for medical reasons, as there is just not enough space. This is strictly a hospital.

Chair Roe asked how many employees will there be. Mr. Foti replied that there will be seven; two doctors and up to five assistants.

Chair Roe asked if he was providing twenty parking spaces, Mr. Foti stated that was correct. The easements and rights-of-way that are shown on the map, actually came off of the Filed Map. There is an access easement that runs along the front for Lot 9. Lot 9 at this time is vacant.

Chair Roe asked if Dr. Tuthill owns the property. Mr. Foti replied that he has for approximately 8 or 9 months. Dr. Tuthill had spoken with the Building Inspector at that time (of purchase) and he was told that having a veterinarian hospital here was an allowed use, and it was only when Dr. Tuthill appeared before the Planning Board he found out differently.

Chair Roe asked if any one in the audience had any questions.

Mr. Bill Ward, who resides across the street on the Buchheit property, stated that he had two concerns. The first being where does the applicant propose to dispose of the carcasses, some people just bury them on the property somewhere. He would not like to go outside someday and found 800 carcasses laying around, like what happened in Georgia. Mr. Foti had a letter, which stated that the medical wastes are handled by two separate carriers that are NY/NJ accredited. Mr. Foti stated that nothing will be disposed of on the property, as it is against the Code. Mr. Ward stated that not only is it against the Code, but it is also against the law.

Mr. Ward stated that he had second question/remark. If the Town has a Code, which prescribes the regulations for a veterinarian hospital, and states four acres are needed, when one makes a mistake and buys only two acres, the codes should not be bent. Particularly, since this is a material error, as it is a 100% increase that is needed. In other words, approval of this application means that the Code does not stand for anything. Mr. Foti stated that he did not have an answer for this, but that this facility is in keeping with the character of the neighborhood. Mr. Foti went on to point out the various uses in the area.

Mr. Ward stated that this is a four acre facility as dictated by the Town. If the applicant did not know about, he should of known about it before he bought the property. Again, this is his mistake and he should fix it by buying additional property. This is not the Town's problem, it is the developer's problem; otherwise the Code means nothing. Any deal made with the previous owner and Dr. Tuthill should not involve the people of the Town of Goshen and its elected officials. This is not a hardship created by an act of god, but by the developer and the remedy must be effected somewhere else. Mr. Ward thanked the Board and stated that his wife had something to say.

Mrs. Ward offered that her husband stated her feelings quite eloquently and that her only concern was the disposal of the dead animals. She did not want them dumped in the woods in the back of the property. Mrs. Ward asked what kind of animals was he going to treat? Mr. Foti stated that is was strictly for small animals and there are no facilities for large animals.

Mr. Ward asked if they could approach and look at the map. Mr. Foti stated that they certainly could. Mrs. Ward asked how many square feet is the building going to be? Mr. Foti replied 2,220 sq. ft. (30 ft. x 74 ft.). Mr. and Mrs. Ward then proceeded to go over the plans.

Mr. Ward stated that there was a right-of-way along both sides of Route 17A. Mr. Foti stated that the rights-of-way are clearly stated on the maps. Mr. Ward stated that there is a right-of-way for eventual expansion of this road. Mr. Foti stated that the area where Mr. Ward was pointing to was the access easement for Lot 9. NYS is trying to limit the access onto Route 17A by providing one for his client's lot and then access along the front of it for the adjoining lot. Mr. Ward stated that he believed that the right-of-way existed on both side of Route 17A.

Mrs. Ward asked why Dr. Tuthill did not buy the adjacent two acre lot, which is for sale, and make the property conform to Town Code. Mr. Foti stated that he did not know who owns it, and could not answer that question. Mr. Ward stated that one could always inquire.

Chair Roe asked what the road frontage was, and Mr. Foti stated it was 186 ft, plus 14.8 ft., which is an angle point at the end of the property line. Mr. Ward stated that he was incorrect that the 14.8 ft. was the easement. Mr. Foti disagreed.

Mr. Ward asked where the septic area would be and Mr. Foti pointed it out on the map. Mr. Ward stated that it was "tightly placed" in the back and hoped that an earthquake did not happen, as it would move onto the adjacent property.

Chair Roe asked about the previously stated communication between Dr. Tuthill and the Building Inspector. Mr. Foti stated that he had spoken with the Building Inspector and someone in Newburgh, who are the new engineering consultants for the Town of Goshen.

Chair Roe asked if she could have something in writing with regards to the communication with the Building Inspector and if Dr. Tuthill could possibly attend the next meeting to answer questions about the type of disposal for the deceased animals. Mr. Foti stated that would not be a problem.

Mr. Ward stated that the property to the south, which is owned by DeRosa, would clearly put the applicant in compliance with four acres. He is surprised that this has not been considered. Mr. Foti stated that four acres are not needed for a small animal veterinarian hospital.

Chair Roe asked how much traffic is generated by this use. Mr. Foti guessed approximately thirty. Chair Roe asked about how many animals will be housed at one time. Mr. Foti stated that there 18 cages and two small runs. Chair Roe asked about proposed construction. Mr. Foti stated that it would have a poured foundation, vinyl siding, and it was definitely not a pole barn.

Mrs. Gersbeck asked about hours of operation. Mr. Foti stated that he would have Dr. Tuthill answer that question.

Mr. Ward thanked the Board for their indulgence and ask them vote to make it stay four acres. The applicant has other means to fix this without a variance. Mr. Ward stated that he would be at the next meeting, unless he is in Afghanistan or some other silly place.

Chair Roe asked if there was a motion to continue the Public Hearing.

Mrs. Gersbeck made a motion to close the Public Hearing.

Mr. Booth seconded the motion. All in favor. Aye. Motion carried.

Chair Roe asked if Mr. Myrow was ready, and then stated that they would now vote on the Panstar application.

Chair Roe asked the Board members if there was a motion to adopt the Negative Declaration.

Mrs. Gersbeck made a motion to adopt the Negative Declaration. Mr. Wilson seconded the motion.

All in favor. Aye. Motion carried.

Mr. Morgan read the Negative Declaration into record.

All in favor:

Chair Roe: Aye

Mrs. Gersbeck: Aye

Mr. Booth: Aye

Mr. Wilson: Aye

II. Public Hearing - Continued

B. Weslowski - An interpretation of existing truck repair facility located on Arcadia Road and NYS Route 94 in an AR-1 Zoning District: Tax Lot No. 18-1-127.2

Please note, before the meeting, Mr. Pahucki was given the Findings, Limitations and Conditions of Amended Use Variance.

Mr. Tom Pahucki stated that he is here tonight for a continuation of the Public Hearing. Mr. Weslowski is asking to be allowed to go from a 60± acre parcel, where a truck repair was allowed since 1954, to a 3.6± acre parcel. A host of material has been handed out and issues have been addressed. He has read through the Resolution that the Board has prepared and considered and Mr. Pahucki accepts most it, as he has some questions and asks the Board for guidance.

Item #23: If this Resolution, as accepted by the Board, is filed with the Orange County Clerk's office would that do the job as prescribed under this item. A metes and bounds would be provided. Mr. Morgan replied that this declaration by the owner is do so that in event that the property is sold, the buyers without fail, will know what the situation is.

Item #24: *"The applicant shall provide the buffering and landscaping of the variance lot as required by the Planning Board."* Mr. Pahucki stated that this was up to the Planning Board and it should read *"...if required by the Planning Board."*

Item #25: *"The buffer area may extend beyond the boundary of the variance lot as determined by the Planning Board."* Mr. Pahucki stated that any buffer provided on the adjoining lot would certainly would be the successors of interest's burden and it should rest with them. Why should the owner of the 3.6 acre parcel put up buffers and screening if we do not know what the adjoining properties are going to be. In other words, it could be a ten acre parcel. This should be a mandate once the property is developed. Therefore, it should read *"...if required by the Planning Board."*

Mr. Morgan concurred, the wording can be changed to *"...if required by the Planning Board"* from *"...as required by the Planning Board,"* in both items.

Item #28: Referring to idling of trucks at any time. Mr. Pahucki wanted to it to state *"Excessive idling of trucks at any time of day is contrary..."* Trucks must idle somewhat. Mr. Morgan agreed that it can refer to Federal and/or State guidelines for idling.

Item #29: The first being that should be strictly a Planning Board decision. Mr. Pahucki stated that the successors of interest, again, should bear the burden of the buffer, screening, plantings, etc., this could be a condition of the sale. If you want to initiate the subdivision of this land these are the conditions that must take place.

Chair Roe stated that the applicant would be receiving the money for the property if he sells it. Chair Roe stated that the Board has been more than generous here. Mr. Pahucki stated that he was looking at it from a different viewpoint.

Chair Roe stated that it was not for the Board to be shifting anything, the applicant is the owner

of the property and will probably see a significant amount of money from a sale, so if the Planning Board requires it there will be no alternatives. Mr. Pahucki agreed that the Planning Board could request it, but how it states here it is absolute. Mr. Morgan stated that he and Mr. Huddleston spoke extensively about certain things not falling through the cracks, i.e.: separation and buffers being a main issue. Mr. Morgan stated that he would work with Mr. Pahucki, therefore, the wording was changed to "*Future residential development of the applicant...to the extent required by the Planning Board or to the extent deemed appropriate by the Planning Board.*"

Chair Roe asked if there was a motion to close the Public Hearing.

Mrs. Gersbeck a made the motion to close the Public Hearing. Mr. Wilson seconded the motion.

All in favor. Aye. Motion carried.

Mr. Morgan asked if the Board wanted to waive the reading of the Negative Declaration.

Mrs. Gersbeck a made the motion to waive the reading. Mr. Wilson seconded the motion.

All in favor. Aye. Motion carried.

Mr. Morgan asked if the Board wanted to waive the reading the Resolution.

Mrs. Gersbeck a made the motion to waive the reading. Mr. Wilson seconded the motion.

All in favor. Aye. Motion carried.

Chair Roe asked if there was a motion to accept the Resolution, with the changes discussed.

Mrs. Gersbeck a made the motion to waive the reading. Mr. Booth seconded the motion.

All in favor. Aye. Motion carried.

IV. Approval of Minutes

Chair Roe asked if there was a motion to approve the March 26, 2002 minutes, as noted with corrections.

Mrs. Gersbeck made the motion to approve the March 2002 minutes with corrections.

Mr. Booth seconded the motion.

All in favor. Aye.

V. Adjournment

Mrs. Gersbeck made a motion to adjourn the June 4, 2002 Zoning Board of Appeals meeting.

Mr. Booth seconded the motion.

All in favor. Aye. Motion carried.

Respectfully submitted,

Gloria J. Lloyd
Secretary

Date Approved: _____