

TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, October 6, 2010, AT 7:00 P.M. AT THE DOVER TOWN HALL:

PRESENT: Chair Marilyn Van Millon
Member George Wittman
Member Debra Kaufman
Member Anthony Fusco
Member Henry Williams

Also in attendance was Secretary to the Board, Maria O’Leary, and Attorney Michael Liguori.

Chair Van Millon called the meeting to order at 7:03 p.m. and began with the Pledge of Allegiance. She then read the first item on the Agenda as follows:

CONTINUED PUBLIC HEARING – RASCO Interpretation - Z 2010-03 – The applicant seeks an interpretation of a determination of the Code Enforcement Officer regarding whether the use of the property as a cold-mix asphalt facility is pre-existing non-conforming. This property is located at 2241 Route 22, Dover Plains, NY and is located in the M district on tax map numbers 7061-00-580190 & 7061-00-5850063.

In attendance was Jack Nelson of Rasco. There were several members from the public present; however, there were no additional comments or submissions.

Chair Van Millon read the attached timeline into the record and asked if there was anything else to add. Attorney Liguori responded that obviously the stuff that was submitted at the public hearing was already in front of the Board so there may be some additional information on record after the timeline was prepared.

MOTION: Member Kaufman motioned to close the public hearing; seconded by Member Wittman.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye
Member Kaufman – Aye	

Chair Van Millon asked if the Board was comfortable making a decision.

Attorney Liguori: You can do this a number ways; one is you can set forth on a discussion on everything that has been provided to the Zoning Board of Appeals either by your review of the Building Department’s files and what the applicant and the public has submitted and following that discussion if any of you want to make a motion or you could ask to have a written decision prepared, it just depends on how you want to deal with it.

Chair Van Millon: I would like a written decision.

Member Wittman: I think that's appropriate in this case; we can discuss it if the Board members want to discuss it tonight.

Attorney Liguori: I think it would be very important for you to have your discussion and then request to have that culminated into a decision and that way there is a very public process on how you came to the conclusion. Whatever conclusion you come to, everybody could see how you arrived at that conclusion and that's very important from the applicant's perspective, the public's perspective, the judicial perspective to make sure that you did the things you were required to do before you made your decision.

Chair Van Millon: The one thing that struck me was that the property has never been abandoned by anybody; the process was going on and the only time they really did stop would be with the Stop Work Orders and the DEC. It does look like when they were violated by the DEC that it was for weight or things like that, I don't think it was ever major.

Attorney Liguori: What would have been definitive for everybody is if there was a Certificate of Occupancy in the file; that's where everybody should start. There was a building permit application that was made, there was a letter from Terry Binotto, the Building Permit was issued, but there is no Certificate of Occupancy in the file, so you will have to try to piece together what happened back in 1994, ironically almost 16 years to the date. Was the Building Permit issued in error? We have the Zoning Code in effect at the time, the Zoning Code provisions, the applicable provisions were copied into the timeline for the Board as well as. Obviously everybody has access to the Code at the time, but there's no explanation for the Board members as to why either the CO isn't there or was it ever issued, we just don't know because it isn't in the file. What you're left to do is to piece together what happened over the next ten years or so when the Stop Work Order was issued as to why that was never raised, was it an oversight, did no one know, was it in the file? What you need to do is look at all the stuff that's in there and say should it have been raised, that's what you need to figure out.

Member Wittman: It is also important to know who we're talking about here; Tommy Taylor was at the time, I believe, the Planning Board Chair, from a letter in 1992; he apparently doesn't have any concerns about the fact that something is going on there and no CO was issued. There were a number of Code Enforcement Officers during the 1990's that were not mentioned here and in none of these cases did anyone ever raise the question about a CO for this facility and that goes right up until just recently why there is no CO. That includes at least two Town Supervisors, one of whom is mentioned in here, it may even include a third Town Supervisor, but I know of at least two and just the people who are listed in the timeline have gone on record, which is something that was included in the timeline, these are people who should have raised some sort of question here as to whether this was a legal or an illegal use; the assumption here apparently is that it was a legal use because nothing negative was said. And the Stop Work Order that was issued February 11, 2005 issued by Building Inspector George Hearn with letters specifically setting forth that the SWO was issued

because no DEC permit was in place. I think we know that at the time and then since then there were a number of documents that were submitted to show that RASCO was in the process of getting new DEC permits. They stopped work at that time to comply with the Stop Work Order which was not a voluntary thing, they were told to stop work, so the fact that no work was going on there within this interim period from when the SWO was issued to date, does not indicate to me abandonment in any sense of the word.

Attorney Liguori: That's a separate issue. There are two issues here, the CO and then the abandonment much later. The Board needs to recognize that TT was not the only use on the facility and all the Board members need to recognize the fact that this building was probably built for one use at one time in the 40's or 50's when the magnesium operation was going on and then over the course of time it had been pieced out in pieces and what I really want the Board to take notice of, because this is very critical for your determination, is when Tim Taylor made that letter, that was in 1992 before TT came onto the property, so just understand that when that letter was written, it was the Carbon Activation use that triggered the letter from Tom Taylor.

Member Wittman: There was a single owner of this property probably dating back prior to all of this stuff happening and there still is, as I understand, a single property owner who has leased various parts of this out to various people. At the time that TT was involved, there was also Carbon Activation, which is mentioned in here and there was also Polytech and all three of these to my knowledge were three separate organizations that had nothing to do with each other. The only common denominator was that they were leasing property from a common owner.

Attorney Liguori: I just wanted you to understand that that's what was going on on the property. If we were dealing with a single tenant user and a single building, I think your job would be a little easier to deal with, but because you have all these other uses that are on the site, it makes it a little more confusing for you to really understand what was going on on the property at the time.

Member Wittman: What would be interesting to see is if either one of these other two operations had CO's issued for their operation.

Attorney Liguori: In the timeline there's a November 29, 1993 Certificate of Occupancy, that doesn't specify what it's for and it's so light that I can't read it.

Member Wittman: There was a CO for Polytech right after that.

Attorney Liguori: Yes, and that was for electric work that was done.

Member Wittman: I don't know whether it approves or disapproves here, but it does speak to at least the one of January 27, 1994, it was issued to Polytech indicates that apparently whoever the CEO was at that time was aware that this happened and issued a CO, so whether this one that's dated November 29, 1993, whatever that's for, I don't

know, but what I think it does indicate is that whoever was the Building Inspector of this period of time was certainly aware that CO's should be issued.

Attorney Liguori: I don't think there's question in anybody's mind that in the '90's that there was a process to follow for Building Permits and CO's, and that's reflected in this file. The other tenants of these buildings were getting Building Permits, they were getting CO's when they were done with the completion.

Member Wittman: This is why I find it very strange that this operation, which is mentioned along with the other two within the same time period, the question of the CO never comes up. Whether it's issued or not issued, I find that there are holes in the records.

Secretary O'Leary brought up the CO on the ZBA monitors for the ZBA members to see and stated that it doesn't look like it went with any Building Permit because down at the bottom, there should have been a Building Permit number, but it was issued with no Building Permit, they wrote "not applicable", we would never do that now because the whole purpose is that it goes with what was submitted.

Attorney Liguori: I was trying to figure out if the first row was "factory", it's hard to figure out.

Member Williams: And the grid number would always be the same?

Attorney Liguori: Yes.

Secretary O'Leary: A lot of grid numbers did change, so I don't want you to think that they never change, but I don't believe this one changed.

Member Wittman: Take a look at it, it looks like "Poly" and then "T" but I'm not sure.

Attorney Liguori: It would be consistent if it were "Polytech" or "Carbon Activation" because it's clear from the record that they were there before TT. This file has been numbered, it has been poured over before Rasco approached the Town, everything has been lettered and numbered, for instance, M-27, M-29, I don't know what that means.

Secretary O'Leary: That was probably from the late '90's, I started here in 2001 and that was already done, there was a woman that came in and went through every file and scanned them into Microfische. She numbered them within the file, but the numbers don't mean anything because every file had the same set of numbers so there's no reasoning to those numbers.

Attorney Liguori: I didn't know they were Microfished; are they in your office?

Secretary O'Leary: I have the little cards as backup, I've never used them, but they are available.

Attorney Liguori: I'm not worried about that, even if they're not very legible, we've been working with a file that's full of holes.

Secretary O'Leary: So, you just want to see if anything is missing?

Attorney Liguori: We would need to before the Board is finished; we can get a machine. For instance, if there is a CO or no CO or if there is another letter arguing about the use or anything like that.

Member Wittman: Unless something comes up after the reading of the Microfische, then that's about all we have. This certainly is a "textbook" case to show why you should keep good records.

Attorney Liguori: It's very interesting to look at this stuff. What happened here happened in 1994 and here we are sixteen years later dealing with something that happened in 1994 trying to figure out what happened sixteen years ago and trying to piece together the situation and this is the reason why records get kept the way they do now.

Secretary O'Leary: From what I understand, before I came, I don't think there was ever anybody in my office doing my job more than two years. I'm the only one who has been here for ten years.

Attorney Liguori: That's not surprising, it's just the effect of whether or not the government at the time wanted to levy the taxes that manned the offices. The employment is always there, people are always capable of doing stuff, whether or not people were willing to spend the money so that offices are manned and things were happening the way they were supposed to happen. I don't know how many governments in Dutchess have part-time government; maybe you don't need it or maybe the budget doesn't call for it.

Member Wittman: Part of the problem, too, is that this Town Hall didn't exist before 1982 so the records up until that time, and I got that from the prior Town Clerk, since 1807 have been kept in everybody's basement or attic, etc.

Attorney Liguori: I think for the benefit of everybody and to keep the process moving, I think what you might want to do, if you know you might want to have a written decision in the matter, then maybe what we can do is set a special meeting to happen sometime between now and the next regular board meeting, maybe in two weeks from now, so that would give us the time to get that stuff converted. I know other towns have Microfische in their office and I can send someone over there to just print out every single thing that's on the Microfische and supplement the file, then what we can do is present that at the next time the Board gets together and take it from there. It's only going to benefit everybody.

MOTION: Member Fusco motioned to hold a special meeting on Wednesday, October 20, 2010 at 7:00 pm; seconded by Member Wittman.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye
Member Kaufman – Aye	

Chair Van Millon: We will have a Special Meeting on October 20, 2010, at 7:00 pm to go over anymore information that may show up on Microfische.

Attorney Liguori: Just so the Board knows, you have 62 days from today to make a decision.

Chair Van Millon read the next item on the Agenda as follows:

PUBLIC HEARING – Pegasus Farms – Z 2010-04 - The applicant seeks a use variance to allow an accessory residential use for a farm operation located within the Industrial/Manufacturing District, which prohibits all residential uses. This property is located at 2699 Route 22, Dover Plains, NY, in the M District, Grid #7062-00-346325.

In attendance was the applicant, Tom Dushas and Richard Rennia, Jr., engineer for applicant.

Rich Rennia: I am the engineer representing the applicant and I have prepared the application materials as well. What I figured what I would do first is give you a little bit of background and a brief overview of the site. Pegasus Farms is located at 2699 Route 22, it's North of the Town Hall, it's also located directly across from the Sherman Hills Subdivision. The existing parcel that it sits on is a 42 acre parcel that is currently in the M zone, which is the Industrial Manufacturing district. To the east of the site is a residential zone, which is the Sherman Hills Subdivision, to the north and to the west of the site is also additional Industrial Manufacturing zone, there's one parcel on either side of it, it's not a lot of industrial manufacturing, but to the north and west of it, it's industrial manufacturing and then to the south of it, the zoning is Commercial zoning.

The current use is agriculture, it's a horse farm, they specialize in the breeding and birthing of horses, that's the business of Pegasus Farms. Currently the M district, the Industrial Manufacturing district, allows the agricultural use, actually, any agricultural use is permitted by right and the M district currently prohibits any residential use; that's the basis for being here.

What the applicant would like to do is to provide living quarters on site within the farm for farm hands because of the nature of the operation. With the breeding and birthing of hoses, it is very important to have people on site for the 24 hour care of the animals. What the applicant is proising is within an existing barn that they have already constructed that they would like to provide two living quarters; one of the quarters would be an apartment that would have two bedrooms and the other would be a quarters that

is just an open studio. The reasoning for asking for the use variance is that agricultural use typically always has a house on it, typically a farmer lives on their site if they're taking care of livestock or they are growing plants or vegetables, there is typically some sort of residential use and what we feel has happened here is when they created the new zoning that came into place in 1997 that this was one particular item that was overlooked because it seems to make sense that you wouldn't want to allow a residential use in the middle of a manufacturing district, because if you had factories or loud noises or different things associated with industrial uses, you wouldn't want to necessarily put in a new subdivision within that district, but this particular use is different that the entire parcel is being used for agriculture and the need for some residential associated only with agricultural use is what's being asked for tonight.

Chair Van Millon: The use variance is required to pass the test of five of items and the first one is, "The applicant cannot realize a reasonable return provided that the lack of return is substantial and demonstrated by complete financial evidence."

Rich Rennia: Which is difficult for us to prove in this circumstance because it's so much different than anything else. Typically, a use variance is to say that my property is zoned for "this," I have no means of financial return for this particular use; therefore I need to come to the Zoning Board and request another use where I can achieve some sort of financial return where this is not a financial return other than the only financial return would be that the people who work on the farm at least there would be two groups who could stay within the farm, so it would technically save the farm some money. Currently right now, the person who operates the farm on a daily basis has a local apartment that the farm pays for, so ultimately it would save them money in the long run. To make that argument, it would be tough because typically it's what I just said, it's one business use versus another business use and we're not looking at a business use, we're looking at the fact of agriculture and a residential use go hand in hand.

Member Wittman: I think what she's probably driving at here, and I'm sure that the fact that a use variance is not the way to go, we're not changing the use of this particular parcel of property, the use is going to stay the same and agriculture is permitted in all the zones as you know. The problem here is that most agriculture is in an agricultural district and of course that would be the Ag and Markets rules which allow worker housing in those districts.

Rich Rennia: The Town of Dover as far as I know doesn't have anything specifically zoned as agriculture as an agricultural district.

Member Wittman: No, but Ag and Market does, so forget about the zoning at this point because as you know, the property owner is permitted to have agriculture in any zone, so that's not the question here, the question is about the housing. If it were in an agricultural district under Ag and Markets, then their rules would apply and the farmer or agricultural person would be able to put in, and there are certain rules, people have to work at that facility, I don't know if there is a limited as to how many people can be

there, etc., etc., so really I think what you're looking to accomplish, whether it's here or someplace else, is to have that kind of situation exist for this parcel of property.

Rich Rennia: Yes, and it's very interesting that you brought that up because that was brought up and discussed. The owner did consult with an attorney and was told that he was going to be moving forward with putting the entire parcel into an Ag district, but we were still told that because of the Town Zoning Law that prohibits all residential uses on that property that he still had to come here to get the use variance; that was the direction that was received.

Member Wittman: That may be the case, I'm just trying to define where you're trying to go with this and how it can be accomplished and I don't think a use variance is the way to go.

Rich Rennia: The option that you're describing is outside of the Town altogether?

Attorney Liguori: Rich, I think when you first started you "hit the nail on the head," the fact of the matter is that agriculture is permitted in all of the districts, yet you have this conundrum where you cannot have a residential use associated with your agricultural operation with an operation that typically would require a person to be on the property to function properly, that's safe to say. We don't know if it's just a blip on the radar as far as whether there was a mistake made in 1997 when the new code was adopted, but I think really what the Board is trying to do is try to help you to get to where you need to go, but I think Marilyn "hit the nail on the head" which is that you're not going to be able to satisfy the criteria for a use variance because you can realize a reasonable return on the property, so because you can't meet the strict requirements of the use variance, what's the other way to do this to get you where you need to go. If you were already in an Ag district, there still would be some municipal process that would have to occur, but also, 3058 of the Ag and Markets Law says that the municipality cannot adopt unreasonable restrictions on agriculture and there would still need to be some process for determination to say that the Zoning Code for the Town of Dover is unreasonably restricted. It's up to the Board if they want to discuss it, I know George Wittman discussed this with George Hearn and is George Hearn amendable to a discussion about an interpretation?

Member Wittman: My discussion was I went to him to confirm the fact that this was not in an agricultural district, which he did confirm. I believe there were some questions that he brought up which you probably are aware of that if there's housing on the second floor that it would have to be sprinkler'ed...

Rich Rennia: There is a whole series of building permit issues that everybody's aware of, there's fire code issues, nobody has done an analysis yet, not even the Code Enforcement Officer to actually go through the Code to say, yes we know a sprinkler is required or a fire separation, whatever the fire code requires, that will be done, building permits would be applied for, a set of building plans, modification plans would be

submitted, all of the ministerial acts based on a building permit would be taken care of and that's understood.

Member Wittman: So, I think the answer to the question is yes, it's my understanding and I believe it's your understanding as well that Mr. Hearn would entertain this if it was permitted in that zone and that he would come up with a list of requirements that you would have to abide with. The question then becomes, who approves this and who is going to regulate it.

Attorney Liguori: My suggestion drafted in correspondence to the Board upon the receipt of the application, which is customary when we review it, and I had made some suggestions to the Board if they felt that, if they think it is obvious that the use variance is the only option that was presented to you to get to where you need to go, but I don't think that was the right option; maybe you should have had two options, which was to request an interpretation of the Zoning Code from the Zoning Board of Appeals instead of the use variance and when you read the Code in the totality, which is what you're supposed to do, obviously every statement in the Code has a particular meaning and you take the finding and the intent purposes and it is very clear that Dover is an agricultural town and is something that is supported. Maybe the proper question to the Zoning Board is should farm worker housing be an accessory use, should agriculture be interpreted to include an accessory farm worker housing component and should that be differentiated from a residential use. I think you can make the distinction between farm worker housing and residential use, for instance, a residential use you have a family living on the farm and making the farm an accessory, so on and so forth, but farm worker housing is really different animal, the people are living there specifically to deal with the farm operation and nothing else and my thoughts to the Board were maybe that might be the right avenue to approach because the other way is requesting a use variance for criteria that you can't meet. You can go to the Town Board for them to try to amend the Zoning, you can try to go to the Ag district, and if you go to the Ag district to have the provisions of the Ag and Markets Law 3058, try to use that as an avenue or try to request an interpretation, those are really the four avenues that you can approach, and question your client and ask what is the best way to do this.

Rich Renna: What is the Board's feel on the interpretation because it seems like if we're going to do anything with this Board that's the direction you're pointing us in, but I wouldn't want to "spin the wheels" and waste time on that.

Attorney Liguori: We know the use variance criteria has very strict criteria, that's probably not going to be the right way to go, because you're going to have a difficult time meeting those burdens, maybe there's another way to do this, may it would be appropriate for us to sit down with George Hearn and talk about that a little further.

Member Wittman: I think that just exactly what Mike said, the way to go is to look for a definition as to whether this is in here and there appears to be an inconsistency in there when they say they're allowed farming in all districts and yet you can't have somebody working on the farm.

Attorney Liguori: When you look at the definition of farm operation, a farm operation is not listed on the use table as any of the permitted uses; agriculture is and there is a definition of agriculture, which does not include a residential use. You look at the definition of farm operation and it says, "Land used in agricultural production, farm buildings, equipment, and farm residential buildings." When the Code was written, what did they mean? If there was a bean farm, you really don't need anyone living on the property, but when you read the definition of agriculture, it includes, "The commercial utilization of land, water and structures for the raising, production, preservation, processing, storage, and sale of agricultural commodities..." and that's very important because those words modify the agricultural commodities, but then they define the commodities, "such as crops, plants, flowers, vines, tress, sod, shrubs..." and then they say "livestock" and I think that's what creates some of the confusion that's here because if it didn't have livestock, then I think you can say agricultural was not really intended to include animals; when you have crops, plants, flowers, vines and trees, then you don't need to have anybody living on the property, but when you start dealing with livestock, then I think you trigger a health and safety issue if you don't have someone on the property.

Rich Rennia: That's definitely the case here. One can debate the vegetable, crops or the hay issue because somebody may have 1,000 acres and they say I need somebody on there to protect the property.

Attorney Liguori: I think the Board wants to help you; the question is what's the right way to get you where you need to be? I think maybe a sit-down with George (Hearn) to figure out the best way to go from A to B would really be helpful. It doesn't need to be the full Board, but George (Wittman), if you're around and you and I want to sit down with George and Rich and your client, and try to figure out the best way to do this, that would be helpful.

Member Wittman: My concern is the fact that I certainly think that the general intention here, although it's very convoluted in there, is that agricultural uses are permitted. In this particular case, obviously it's necessary to have somebody there; however, to try to keep this in accordance with the long-term provision here, which we're talking about allowing something on a parcel where it says it's not allowed, is that say we want to make sure that as long as it is going to be used for agricultural purposes, that whatever we come up with applies to that. If it changes to something else in the future, this is null and void. It becomes housing permitted if it goes to an agricultural use that brings it back into compliance into the M zone.

Rich Rennia: That is our feeling. Even if it was a use variance that we went for that this was only to be issued for an agricultural use. If somebody came in ten years from now and wanted to do something different there that was not an agriculture use, it did not stay.

Member Wittman: I think that would solve a lot of different problems. We should sit down with George and come up with exactly what's necessary to do it and then ask for an interpretation and whereby we can come up with the framework for whatever it is that needs to be.

Attorney Liguori: We'll get in touch with George and talk about it.

Rich Rennia: Then we can go through the Code and start to formulate our opinion on how the Code reads.

Attorney Liguori: I think it's helpful to have George (Hearn) there because I want to have George's blessing as to how we will go so that there is no confusion in the future as to what's happening here and I think it's very beneficial to your client if we have that. The applicant has submitted an application for a use variance, regardless of whether or not we want to entertain this variance, it probably would be appropriate to open the public hearing. If the applicant is going to stand on ceremony, then it's his right, but it's up to you (the ZBA).

MOTION: Member Wittman motioned to open the public hearing; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

MOTION: Member Wittman motioned to adjourn the public hearing; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Chair Van Millon: If you meet with George Hearn between now and the special meeting, we can bring it up on the 20th.

Member Wittman: Now that the meeting is over, we have to let the public know that it's going to be either yes or no at the next meeting.

Rich Rennia: How much time do you want on this new application for review, it's typically about two weeks?

Attorney Liguori: All we need to do is just make sure that if it's going to be an interpretation then the notice be appropriate.

Member Wittman: The applicant then can decide right away, like tomorrow, to pull this and change it to an interpretation.

Attorney Liguori: He's going to have to wait until we have that meeting.

Member Wittman: We know it's not going to be a use variance.

Chair Van Millon: Looking at the time schedule, I think we should save it for the November meeting.

Attorney Liguori: You should amend your previous motion to continue the public hearing until the November meeting.

MOTION: Member Wittman motioned to amend the previous motion on Pegasus Farms to state that they will continue the public hearing to the November meeting; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

A meeting has been scheduled for October 12, 2010, for 2:00 pm for Rich Renna, Thomas Dushas, Attorney Liguori and George Wittman and George Hearn to discuss Pegasus Farms.

Chair Van Millon read the next item on the Agenda as follows:

PUBLIC HEARING – Shelters Area Variance – Z 2010-05 - The applicant seeks to appeal Section 145-11 (B) of the Town of Dover Zoning Law. The requested 3' area variance would, if granted, allow the applicant to erect a garage on the property without meeting the required 29' side yard setback. The property is located at 77 Woodside Drive, Dover Plains, NY, in the SR District on Tax Map #7061-02-732711.

In attendance was the applicant, Jeff Shelters.

Mr. Shelters: I'm here tonight to represent my brother; the property is in trust. We're looking to put up a two-car garage for my mother due to her age and she's tired of shoveling snow off her car. In aligning it with the existing conditions, it sets it 3' into the required setback.

Chair Van Millon: Does everybody have this memo comment from George Hearn? (yes) It says, "This is a .76 acre parcel in an SR zoning district which currently requires one acre of land per the Dimensional Table 145-11. If we knew the exact width of the lot at the proposed location of the garage, and applied 145-29 A., then it could be possible if this figure is..."

Member Kaufman: I actually got the number, and the number at the garage is 138', so it's not going to make it. 138' by using that rule would require his setback to be 27'.6",

so he's still 1' over. I'm not quite sure where the width should be. The width for the front yard is 130' and that would be fine, it would be 26', but I don't know where width would be for this.

Member Wittman: Do we want to open the public hearing tonight and maybe the applicant could see Mr. Hearn to get an interpretation of what he thinks is supposed to be the appropriate width and whether a variance is needed and what the maximum amount of that variance should be, so maybe you would have to change the application or maybe not even bother, it depends on what he interprets it as. Did you see Mr. Hearn before and is he the one who said you need a variance?

Attorney Liguori: Yes, August 4, 2010.

Member Wittman: He needs to determine where it is located.

Secretary O'Leary: The comment form is different from the denial. When he applied for the building permit application, he received a denial (August 4, 2010) and when I received the ZBA application, I gave that to Mr. Hearn for his comments (September 2, 2010).

Chair Van Millon: It would be nice if he would have asked the person who he denies if he can move it over a little, or if you make it a little smaller.

Mr. Shelters: Especially since I was on the phone with him earlier this week.

Attorney Liguori: The issue is where do we measure the width from?

Member Kaufman: That's what I'm asking, where is the width measured from?

Member Wittman: Is it possible to move that over by a foot or two?

Mr. Shelters: I can't because the deck and the septic line run right through there; I've already shortened it up as much as I can by putting a 16' door in there instead of two 8' separated by a column, I squeezed it down as much as I can. Worse case scenario, we shorten the garage by one foot.

Member Wittman: The reason I suggest we talk to George (Hearn) is for that fact that maybe with more information, the variance can be a lot smaller depending on what his interpretation is.

MOTION: Member Wittman motioned to open the public hearing; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Attorney Liguori: I don't think we have a definition (of where the setbacks are). If we don't define lot width in the Zoning Code then I want to see if there are measurements in the subdivision rights because that would give us a little bit of an idea. Let me go back to 145-29 A.

Mr. Shelters: I believe George said it was .67 was the acreage.

Attorney Liguori: .76

Mr. Shelters: According to the survey, it's .82 acres.

Member Kauffman: If it is taken from the structure itself, then it's only 1.5' into the setback.

Attorney Liguori: If we apply Section 145-29 A. (2), the following minimum area and dimensions are maintained unless smaller dimensions are permitted in the district, we need a minimum lot area of 8,000 square feet, which we have. A front setback of 15% of lot depth, but not less than 30' from the centerline of the road, side setback, 20% of the lot width, but not less than 8' per side.

Member Wittman: Lot width, we're do we measure this?

Attorney Liguori: Why don't we start with the frontage; it appears that there is 125' of frontage, look at the surveyor's marking of 78 degrees, 57 degrees, 00, 125. If we use frontage alone, then it's in our discussion, you have latitude to make these kinds of interpretations and determinations, let's apply that on frontage. Side setback can be 20% of lot width, but not less than 8' per side. 20% of 125' = 25, so it would be fine and that's the narrowest part of the lot, so what we can do is say, "The Zoning Board of Appeals has determined that based on the use of the frontage, that a minimum of 25' is needed, he's giving 26', therefore, the Zoning Board of Appeals has determined that no variance is necessary." You can make that motion. Restated: The Zoning Board of Appeals has reviewed the Shelters application and based on Section 145-29 A. (2) (c) has determined that 20% of the lot width based on the frontage of the lot of 125' is 25' and the applicant proposes to construct a structure at the 26' mark that no variance is required.

MOTION: Member Wittman motioned to close the public hearing; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Secretary O'Leary will type a Resolution stating that, "The Zoning Board of Appeals has reviewed the Shelters application and based on Section 145-29 A. (2) (c) has

determined that 20% of the lot width based on the frontage of the lot of 125' is 25' and the applicant proposes to construct a structure at the 26' mark that no variance is required" to put in the file.

MOTION: Member Kaufman motioned to approve the September 1, 2010 minutes; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Member Wittman: LukOil, I don't know if any of you have seen the last ARB meeting, I did, they had a really excellent idea. If you take a look at what's being requested by LukOil, they are requesting overall height of 15.3', the allowed is 10'. The way I see it is if on the proposed freestanding sign, if you move the LukOil logo and put it along side or if you remove it altogether, then the only variance you will need is for a 12' 3", so it's 2' 3". The only thing I'm concerned about and I think it does work out here is that this lower sign is high enough that you can see through to the other guy's sign and when you go the other way around, it's high enough so that it doesn't interfere with the other guy's sign. I heard that there and it's not that I came up with this brilliant idea, this has been reduced, so if you take the new reduced sign, and move it either on the side or just take it off, then we only need a very small variance. Listening to that ARB meeting, it sounds like we're going in circles here because they're waiting for us to decide what kind of a variance we're going to issue before they can come up with what the signage is.

Attorney Liguori: They haven't asked us for that, that's not our job. You had the brilliant idea of telling them to lower it and cut off that panel.

Member Wittman: They were just tossing ideas around, they were talking about the logo on the awning/valance and the only question they had is how do they illuminate that. They haven't put anything on here as to how they are going to illuminate this.

Chair Van Millon: According to what the ARB sent us, the applicant is to explore the other options; encouraged to down light canopy, remove logo portion of free standing to allow prices alone to be posted on free standing sign. Applicant is also to investigate alternatives such as side by side posting of logo of price, or reduce panels of 3 x 5 logo with 3 x 5 price on a 12' 6" post. Applicant will explore options and communicate intent to Zoning Board of Appeals. Applicant MUST remove all miscellaneous auto repair signage, as this business is no longer on site.

Member Wittman: The reason I brought this up is to say that it appears to me that we need to tell him what he's going to be able to get for a maximum height and then we can come up with something that will be satisfactory with the ARB.

Attorney Liguori: I think we know that the ARB is OK with him being as high as 12' 5", they have made that recommendation to us. And there is the recommendation from the County that we need the four-to-one because the County is recommending that we not grant the variance.

Chair Van Millon: That was for the illumination.

Member Wittman: And I already measured from the sign to the curb and it's in excess of what the County requires by about a foot or two.

Attorney Liguori: We know that the ARB is OK with the 12' 6" because they made that recommendation, but when they came to us for the variance, it was for 15' 5[" and so what the Zoning Board tried to do was say that you're showing us all that blank sign, you don't need it all, get rid of it, bring it down to lessen the variance, they went back to the ARB and the ARB said stick with the 12' 6".

Chair Van Millon: At the last meeting September 27, "Applicant is to also investigate alternatives such as side by side posting of logo and price, or reduce panels of 3 x 5 logo with 3 x 5 price on a 12' 6" post."

Member Wittman: The only question I have, and this has been photoshopped, is to avoid doing something like what they had in this photoshopped thing; not only the overall height, but also the fact that there's got to be some see-through here to prevent confusion with the other signs.

Attorney Liguori: Their application before us is for 15' 3". They had the ARB meeting, they submitted at their own risk for this meeting, they knew that, that was up to them at the hopes that they can get 15' 3" at the ARB. So now, they're going to have to resubmit. If we want to have some correspondence with them, we say we see what the ARB has done at the last ARB meeting, and we're OK with the 12' 6" so if you want to come in with something with the variance for the 12' 6" then we're willing to entertain it, amend your application accordingly.

Member Wittman: If we do a maximum overall height and have a lower dimension for a see-through, anything you and the ARB want to do in between, that's up to you guys.

Attorney Liguori: That would give them what they need, because they can go back to the ARB knowing that they are going to get something from the ZBA.

Member Wittman: Then we can send them some notification and they can resubmit.

MOTION: Member Wittman motioned to adjourn the meeting at 8:40 p.m.; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye

Member Fusco – Aye
Member Williams – Aye

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Member Kaufman – Aye

Meeting adjourned at 8:40 p.m.

Respectfully submitted by:

Maria O'Leary
Secretary to the Zoning Board of Appeals

MEMORANDUM

TO: Zoning Board of Appeals
FROM: Michael T. Liguori
RE: Building Department Time Line for TT / Rasco
DATE: August 31, 2010

Members,

I took the timeline that Maria prepared and inserted comments and notations that are relevant to the Zoning Board's determination.
See below.

Mike

RASCO Timeline – Building Department Records

Multiple industrial uses on site. No copies of site plan approvals for any other uses on site.

Code in effect at time was adopted in March 9, 1987.

Section 602- The ordinary steps to erect and occupy a permitted structure are as follows:

a. All persons desiring to undertake any new construction, structural alteration, or changes in the use of the of a building or lot shall apply to the Zoning Administrator for a building permit by filling out the appropriate application form and submitting the required fee.

b. The Zoning Administrator will either issue or refuse to issue the building permit.

c. If a building permit is issued the Applicant may proceed to undertake the action permitted and, upon completion of such action, apply to the Zoning Administrator for a certificate of occupancy.

Section 606- Application for site plan approval shall be made to the Zoning Administrator prior to consideration of a building permit for commencement of excavation, or the construction of any building or structure, or the use of land.

No requirement for site plan approval for change in use of existing structure.

The significant issue or question was whether a certificate of occupancy was ever issued. A CO for was applied for (See BP 1994-154) but either no CO issued or whatever was issued is no longer in the file. Had a CO been issued, there would either be no question before the ZBA or the question to be resolved would be whether a stop work order is tantamount to a “discontinuance” of the use.

It was GTH’s original opinion (April 2009) that the use was pre-existing non-conforming but that it was discontinued due to the time elapsed during the stop work order.

The timeline below reflects a catalog of all correspondence in the Building Department file for all uses on the site.

1986-11-07 – Material Safety Data Sheet
1992-05-07 – Cactus – Proposed Facility
1992-05-20 – Application Carbon Activation

Letter from Tom Taylor to DEC-

“It is the Planning Board’s position that these people are occupying an existing building in an approved site with an existing site plan, therefore do not need at this time a site plan approval. Without the need to grant site plan approval we have no jurisdiction, therefore can not be lead agency. Any issues of concern will be addressed in the Air Quality Permit. There are no local issues of importance related to this matter. The Planning Board feels there will be no impact to the CEA.”

[note that there appears to be a site plan/survey in the file for the overall site, but **need to check if it was specific to one use]

1992-06-03 – Neg Dec
1992-12-08 – Envelope
1992-12-29 – BP 1992-147 – PolyTech Corp. to Enlarge Doors
1993-01-06 – Envelope

1993-03-08 – DEC Application for Solid Waste Mgmt Facility Permit by Allied Cold Mix Corp. (then Atlas). Describes use Beneficial Use Products Manufacturer- bottom ash from coal burning plants and soil contaminated with no. 2 fuel.

1993-03-08 - Long Form EAF for Allied Cold Mix Corp.-make cement and asphalt cold mix paving materials from bottom ash and/or soil contaminated with no. 2 fuel.

1993-05-04 – BP 1993-033 – PolyTech Corp. for “Concrete Accessory Pads for Nitrogen Tank Storage

1993-06-03 – Application Referral
1993-06-17 – BP 1993-073 – COH Corp. “convert a window to door”
1993-07-15 – Neg Dec

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1993-08-23 – DC EMC
1993-09-29 – Electrical Certificate
1993-11-29 – CO 1993
1994-01-18 – Plot Plan
1994-01-27 - CO 1994 “PolyTech Complete Plant Facility”
1994-03-28 – DOH Letter
1994-04-22 – Request for Interim Financial Surety
1994-05-06 – Interpretation of Federal Law
1994-09-12 – BP 1994-122 – Application by Polytech Recycling Corp. to alter structure for installation of Processing Equipment (\$400,000) and for Certificate of Compliance for Facility. No referral to Planning Board for site plan approval.

1994-10-04 – Letter to T&T from Terry Binotto

“It has come to the attention of this office that your company, known as TT Materials, is currently seeking a permit to operate a processing facility at the Mid-Hudson Recycling Park. To date, this office has not received any documentation as to the process being considered or has site plan approval been received for any modification or alteration to the site as required under our current zoning laws. It is required that you contact this office at the earliest possible time so that these issues might be resolved.”

1994-10-11 – DEC Permit Issued to TT Materials Corp. construction and operation of cold mix asphalt facility.

1994-11-23 – BP 1994-154 – TT Materials. Alter Building and placement of Fence Application for CO for Soil Processing \$50,000 estimate for value of work

This permit issued 1 month after letter from Binotto.

1995-01-18 – Memo from DC Resource Recovery Agency
1995-03-03 – YAL Technical Report
1995-03-17 – York Technical Report
1995-03-17 – Letter to Wayne Tanner
1995-07-25 – Letter to Wayne Tanner
1995-07-31 – Material Review
1995-09-01 – Article
1995-AAR Articles
1996-01-01- Date of Tire Fire
1996-01-04 – Articles
1996-01-05 – Letter from COH Corp
1996-01-07 – Letter from Mid-Hudson Recycling Park
1996-01-09 – NORCARB Material Safety, Fax from
1996-01-16 – Letter from DEC to TT Materials re: Materials are being stored outside in violation of DEC Permit- Letter not copied to Town of Dover.
1996-01-29 – BP 1996-096 – Salvage Machinery from fire
1996-01-31 – NORCARB Material Safety Data Sheet

1996-02-29 – DEC Violation Notice to TT Materials Corp. – Copied to Town of Dover Supervisor

No issues raised about existence of CO.

1996-03-04 – Appendix 3

1996-03-04 – BP 1996-018 – Masonry Wall, Building 1 Application also for CO for Tenant Separation. Again, no referral to Planning Board.

1996-03-14 – Article

1996-03-29 – Letter from DEC to TT Materials Corp. clarifying/confirming that its materials can be used for Roads, Parking Lots, Driveways, Tennis Courts, Bike Paths, Horse tracks/arenas and Sidewalks

1996-10-04 – Letter to DEC from TT Materials re: permission addition of crumb rubber to mix from materials being reused from PolyTech.

1997-08-25 - Article

1997-08-25 – Letter from Terry Binotto

1997-09-02 – Letter from Carbon Activation

1998-05-06 – Memo from Jill Way to Terry Binotto re: TT Materials

“In regard to our conversation this morning concerning TT Materials purportedly bringing in rock crushing equipment to their site, please advise them of the following. Any expansion requires a building permit and site plan approval from the Planning Board. Since the Moratorium on Solid Waste Management Facilities includes the expansion of solid waste management facilities, had you applied for this permit, you would have been subject to the moratorium. Please make him aware that he should advise us before he does anything else.

No comments in the memo regarding whether use is legal or illegal or that the business does not have CO. The absence of that information tends to show (i) either no one was thinking about whether the use lawfully occupied the site; or (ii) that it was lawfully occupying the site.

1998-05-07 – Letter from Terry Binotto to TT Materials

Delivered By Hand.

“It has come to the attention of this office that processing equipment was brought to the site to manufacture what appears to be a form of item four. Please be advised that there is presently a moratorium on solid waste management facilities which includes any form of expansion even if of a temporary nature. In the future, please be advised that the introduction of any new equipment or any expansion of any kind will require a building permit and would become subject to the conditions of the moratorium.”

Again no information or comments regarding legality of use.

1998-05-08 – Letter from Mid-Hudson Recycling

1998-06-30 – Letter from Terry Binotto to TT Materials

“I recently paid a visit to your facility and I noted that you have made progress in repairs to the hydrant system. This work must be completed and the system tested. You must commence work immediately on the repairs to the masonry portion of the structures currently occupied by your corporation. We had discussed a time line several months ago dealing with the above mentioned repairs and you were going to give this office a write commitment and a time frame for the repairs. It is imperative that this work be completed immediately to prevent any further ramifications. Please submit to this office when we can expect the repairs to be completed.”

Again, no issues raised about legitimacy of use or lack of CO.

1998-11-06 – DEC Violation Notice

1999-01-26 – Notes

2005-02-10 – Fire Inspection Reminder Letter

2005-02-11 – Stop Work Order by Building Inspector GTH with Letter specifically setting forth that SWO issued because no DEC permit in place.

Again no comments about CO?

2005-10-31 – Fire Inspection Reminder Letter

2006-03-20 – FOIL

2008-11-10 – CO Search

2009-04-03 – RASCO BP Application, Soil Processing Building

2009-06-29 – Letter to Jon Adams

2009-08-19 – FOIL

2010-04-19 – Letter from HVA

2010-05-05 – Memo from George Hearn

2010-05-13 – FOIL

2010-05-18 – Planning Board Referral

2010-05-28 – Fax from Shannon Martin-LaFrance

Miscellaneous information

Terry Binotto Notes

RASCO Timeline - ZBA Records:

2010-05-17 – Letter (handout by Jill Way on 8/4/10)

2010-05-18 – Letter from Planning Board

2010-06-21 – Letter (handout by Jill Way on 8/4/10)

2010-06-21 – Planning Board Neg Dec

2010-07-15 – ZBA Fee

2010-07-15 – ZBA Application

2010-07-20 – Letter from Shannon Martin-LaFrance

2010-07-23 – Public Hearing notification letter sent to applicants

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2010-07-23 – Public Hearing notification letter sent to neighbors

2010-07-27 – Affidavit of Publication of Public Hearing Notice in the Poughkeepsie Journal

2010-07-27 – FOIL Request by Evelyn Chiarito

2010-07-27 – Voucher from Poughkeepsie Journal for Public Hearing Notice

2010-07-30 – Letter (handout by Jill Way on 8/4/10)

2010-08-04 – ZBA Attendance Sign-In Sheet

2010-08-04 – FOIL Request by Cybill Gilbert

2010-08-04 – Letter from Evelyn Chiarito (read at meeting)

2010-08-04 – Handouts by Jon Adams (read at meeting)

2010-08-04 – Letter from Jill Way (handout by Jill Way on 8/4/10, read at meeting)

2010-08-04 – ZBA Speaker Sign-In Sheet

TOWN OF DOVER



Zoning Board of Appeals

126 East Duncan Hill Road
Dover Plains, NY 12522

(845) 832-6111 x103
(845) 832-0370 fax

RESOLUTION

PUBLIC HEARING – Shelters – Z 2010-05 – The applicant seeks to appeal Section 145-11 (B) of the Town of Dover Zoning Law. The requested 3' area variance would, if granted, allow the applicant to erect a garage on the property without meeting the required 29' side yard setback. The property is located at 77 Woodside Drive, Dover Plains, NY, in the SR District on Tax Map #7061-02-732711.

In attendance was the applicant, Jeff Shelters,

MOTION: Member Wittman motioned to open the public hearing; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

MOTION: Member Wittman motioned that the ZBA reviewed the application and based on Section 145-29 A. (2) c., the ZBA has determined that 20% of lot width (based on frontage of lot of 125') is 25' and the applicant proposed to construct at 26'; therefore, no variance is required; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Marilyn Van Millon DATE
Chair, Zoning Board of Appeals