

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, September 8, 2014 at the LaGrange Town Hall, 120 Stringham Road at 7:30 p.m. Chairman Paul Bisceglia called the meeting to order. Board members Nancy Swanson, Christian Rohrbach and alternate Leana Cropp were present. Mark Christenson and Sandra Lane were absent. Ronald C. Blass, Jr. Esq. of the firm of Van DeWater & Van DeWater was also present.

Mr. Rohrbach made a motion to accept the minutes of August 4, 2014 as written. Ms. Swanson seconded and the motion carried unanimously.

OLD BUSINESS:

3-12-01 AREA VARIANCE: MYLES LANDSTEIN, 16 VELIE ROAD,
LAGRANGEVILLE, NEW YORK Grid No. 6560-01-138549

Seeking relief from Chapter 240-28 Schedule B that states that the maximum height of a building or structure in an R-120 zoning district is 35' and seeking relief from Chapter 240-31 F.(4)(f) Ridgeline Protection Overlay Zone which states that the proposed yard setbacks from the property line must be no less than 1.5 times the height of the proposed structure or the setback requirements in the existing zoning regulations, whichever are greater in order to construct a ham radio tower with boom antenna with a proposed height of 70' and a boom width of 23 feet and proposed setbacks of 40' and 70' from the side and rear yards.

At the consent of the applicant, and with agreement of the Town, this application has been postponed to the October 6, 2014 meeting.

9-14-01 AREA VARIANCE: MICHAEL TRAVIS, 29 COUNTRY LANE, LAGRANGE,
NEW YORK Grid No. 6462-03-252108

Seeking relief of 18' from the rear property line in order to construct a 3-car garage with a proposed setback of 22' per Chapter 240-28 Schedule B that requires a minimum rear property line setback of 40'.

Mr. Travis was present and was sworn in by Mr. Rohrbach.

Mr. Bisceglia said he noted that Mr. Travis was seeking relief of 18 feet from the property line in order to construct a 3-car garage with a proposed setback of 22 feet. Mr. Travis said that was correct.

Mr. Bisceglia asked the height of the garage. It was determined to be about 20 feet tall.

Mr. Bisceglia asked if the adjacent property owners had been notified. The secretary said they had been.

Mr. Rohrbach said he had been out there and he asked if the orange markers were depicted to be the boundaries of the garage. Mr. Travis said yes, they were. He said originally he plotted the garage with a 40 foot setback and he realized that he did not want to live with that location. It would have pushed the structure closer to the existing driveway. The plan was that eventually the existing house would be torn down and a new house would be built and he

did not want the garage so far out into the property. His accompanying statement explained that and other reasons for the proposed location.

Mr. Bisceglia asked the location of the well and septic. Mr. Travis said the well is in the back and he indicated on the plot plan the location of the septic.

Mr. Bisceglia asked what would be the primary use of the building. Mr. Travis said it would mostly be for storage and workshop. Mr. Bisceglia asked if there was any intent to use the garage for live animals. Mr. Travis said no.

Ms. Swanson said when she was out there that afternoon she saw a piece of heavy equipment and wondered if there would be construction equipment stored there. Mr. Travis said he would probably be storing the kubota tractor in the garage. He said he works on most everything himself and he would like to have a place to work on his car. Ms. Swanson assumed that the purpose of the garage was not to store construction equipment. Mr. Travis said no, he is not in the construction business. He needs his tractor to keep the place clean.

Ms. Swanson said, since he is going to be building a new house, did he think about leaving the garage until he had the plans for the house. Mr. Travis said that would probably be the normal way to do it, but his problem is that his wife and he were having a hard time deciding what they wanted and they thought they would get the garage done first so there would be a place to store things when they move. That would allow them to focus on the house later.

Mr. Bisceglia referred to the plot plan and asked if the topography went down hill or was it relatively flat? Mr. Travis indicated on the map where it is fairly flat and he said it does taper down. He showed where the property goes down in the direction of Dana Drive. He said the property is all flat in the direction of his house and again he showed on the plan how the property drops off where an imaginary line is drawn.

Mr. Rohrbach asked if Country Lane is a shared driveway or was it managed by a municipality. Mr. Travis said he and the person who shares the driveway with him do all the maintenance.

Ms. Swanson asked if he was to move the garage further east there was a lot of space there. Mr. Travis said he did not want the garage to be too close to the house. He indicated where he hopes to put the house and have a pool and patio and he did not want to get it too close to that. The patio would be to the south west.

Mr. Bisceglia said it looked like the garage would be closest to the rear of the two adjoining parcels of land so it did not appear to make a huge effect on the neighboring properties. Mr. Travis said he did talk to the owners of the adjoining properties.

Mr. Rohrbach said it appeared that it was only one corner that is close and it quickly moves away from the boundary line.

Mr. Rohrbach made a motion to open the public hearing. Ms. Swanson seconded and the motion carried unanimously.

There being no comments from the audience Mr. Rohrbach made a motion to close the public hearing. Ms. Swanson seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Mr. Bisceglia then addressed the Record of Findings:

Character of the Neighborhood and Detriment to Nearby Properties

The property goes way back off the public road. It is on a private road and the garage will not be seen from the public road. The location of the garage will not impact the adjacent properties.

Alternative Methods for Achieving Benefit Sought by Applicant

The garage could be moved but due to the topography of the land, this appears to be an ideal location with the least amount of impact on the topography and the neighboring properties.

Substantiality of Variance Requested

This is not a substantial variance and it is a reasonable request.

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

The proposed location has the least impact on the environmental conditions.

Self-Creation of Difficulty

This is a self-created difficulty but the owners seek to have some larger space, which they are entitled to.

Based on the Findings, Mr. Bisceglia made a motion to grant Mr. Travis of 29 Country Lane relief of 18 feet from the rear property line in order to construct a 3-car garage with a setback of 22 feet with the condition that the structure shall be limited to garage use which is accessory to single-family residential use of the Parcel. It may not be used for, or in support of, commercial activity. Mr. Rohrbach seconded and the motion carried unanimously.

AREA VARIANCE GRANTED

9-14-02 AREA VARIANCE: OLD OVERLOOK DEVELOPERS LLC, OVERLOOK ROAD AND OLD OVERLOOK ROAD, LAGRANGE, NEW YORK Grid No. 6361-02-500585

Seeking relief from Chapter 240-28 Schedule B that requires a minimum width of lot at any point of 100' for lots 2, 3, 4, 5, 6, 7 & 8 and seeking relief from Chapter 240-28 Schedule B that requires a minimum frontage on a county road of 200' for lots 3, 4 & 5 in order to carry out a 9-lot subdivision.

John Andrews, P.E. of the firm of Rohde, Soyka & Andrews was present to represent the applicant.

Mr. Andrews said he was representing the owners, Old Overlook Developers in the matter of The Pines at Old Overlook, a 9-lot subdivision which requires several variances in order to proceed. They currently have an application pending before the Planning Board. What they have is a 65.9 acre parcel. It is located on Overlook Road, Old Overlook Road and is bounded by the power lines. They are proposing to use two common driveways and two individual driveways. One individual driveway will take access off of Overlook Road and support Lot #9 which is a 20 acre lot. Another individual driveway will come off Old Overlook Road and support Lot #1. There is a common driveway that will take lots 2, 3, 4, 5 and 6. Another common driveway will serve Lots 7 and 8. Mr. Andrews said the board might

be familiar with the property. It is the old Millett Tree Farm. One of the goals that they had in processing this subdivision is to maintain the vegetation even though the trees have gotten away from tree farm quality. They have formed a nice buffer boundary and said the tree line boundary shown on the plan is fairly accurate. What they have tried to do is site houses, wells, septic tanks and driveways in the open spaces so they can minimize the tree removal. They have had a number of development proposals during the years. One proposal was for almost 40 lots relying on town water and sewer. They elected not to pursue that. They then had an approximately 18 to 20 lot subdivision with a major town road riding up the center. That was rather ambitious. They have since scaled the proposal back and looked at the way the property lays out naturally, and are down to 9 lots. Each lot would be individual wells and septic tanks. They are in the R-40/60/80 zone and each lot exceeds 80,000 square feet. The smallest lot is 2.62 acres and the largest lot is 20 acres. Most of the other lots hover in the 3 to 5 acre range. In order to achieve the common driveway approach they have created a scenario where lots 3, 4 and 5 take their access off Overlook Road which is a county road. 200' of frontage is required on a county road. They have identified it as 75 feet but they would not have any driveways there. They would come off the common driveway. Lots 2, 3, 4, 5, 6, 7 and 8 all have a portion that is less than the minimum width of lot at any point. The allowable town road frontage is 75 feet but the minimum width of lot at any point is 100'. Variances would be required for those lots. The site is a little unique. There is a major wetland that isolates the site. It runs from the Rombout Road/Hennessey Road area and comes down and around the site near the Frank Farm Subdivision site. There is a nice high ridge point. Two of the lots are isolated because there is another major wetland that separates the property into two sides. They have been before the Planning Board but in order to advance the project they needed to come to the ZBA and address the issues of variances. The required frontages along the county highway were less than 200' and the minimum width of lot at any point. If the variances are granted it will allow them to use a common driveway fully consistent with Town Code. It minimizes the amount of impervious material they would need for a town road and it eliminates the need for the Town to take it over. It minimizes the drainage. It is a little easier to handle the drainage for a 16' wide common driveway with several spurs off it than it is a major town road. This offers the best opportunity for the development and minimizes the impact, not only for the wetland but to the community because once the property is developed, no one will be able to see most of the house sites.

Mr. Bisceglia asked if the wetlands are federal or state. Mr. Andrews said they are town wetlands. They are conceivably large enough to be acquired by the state but the state hasn't taken them yet but they are being treated as though they are state wetlands. They have maintained a 100' buffer which is consistent with Town Code. They only have one slight crossing of the buffer and that is the driveway for one lot. Other than that, everything is well outside the wetlands or the buffer.

Mr. Bisceglia asked if it is physically wet where it is crossed or is it just vegetation that is visible. Mr. Andrews said for a good ten months of the year it is just vegetation and the soils are a little damp. In the spring time, because there are a couple of county culverts that run, there is probably a little more dampness, but if one is familiar with the site there is actually a stream that runs through that is well defined. That is where the bulk of the water runs. As it comes across the road the county has put in a couple of culverts so they create the wet spot but for the most part their driveway will be a dry crossing. They will probably culvert it to maintain the hydrology of the area but it will be a relatively minor crossing.

Mr. Bisceglia asked Mr. Andrews to specify each of the variances they were seeking.

Mr. Andrews said the minimum frontage required on a state or county road is 200'. The frontage on Lot #3 is 75', Lot #4 is 75', Lot #5 is 75'. The minimum width of lot at any point is 100'. Lot #2 is 75', Lot #3 is 75', Lot #4 is 75', Lot #5 is 75, Lot #6 is 75', Lot #7 is 98.13 and Lot #8 is 97.32'.

Mr. Andrews said those lots are created so that they can take advantage of the interior common driveway.

Mr. Rohrbach said there was a farm gate on Old Overlook Road. He asked if that was where one of the common driveways was going. Mr. Andrews indicated on the map one farm gate which is roughly where the common driveway is going. There is a hole in the fence where the second common driveway is going.

Mr. Rohrbach asked who would be maintaining the common driveways. Mr. Andrews said that would be the subject of a common driveway access and maintenance agreement and the individual home owners would be responsible. That will be one of the conditions of the Planning Board.

Mr. Blass said this application had been referred to the Dutchess County Dept. of Planning & Development and they have not yet reviewed the proposal on the merits because of a comment regarding an agriculture data statement. The gist of the County Planning comment is that the agricultural data statement should be obtained and then the referral should be re-submitted to County Planning. The applicant has now submitted an agricultural data statement dated September 3rd and it is front of the board now. Mr. Andrews said it has also been hand delivered to County Planning at the request of the ZBA secretary.

Mr. Blass said the County Planning comment was that once they had obtained the data statement they would then initiate their 30 day review period. Mr. Blass said this does not necessarily affect closing the public hearing but it is an issue as to whether the ZBA could make any decisions that night.

Mr. Blass said that on another note, he had confirmed with the applicant that day that this is a Type I Action under SEQRA by virtue of the fact that there will be development within the Ridgeline and a Special Use Permit will be required from the Planning Board in addition to subdivision approval and variances.

The Planning Board has taken on the role of lead agency to make the ultimate determination of significance as to whether an EIS is or is not required. The rule under SEQRA is that, because they are only an interested agency, the ZBA "tailgates" the activity of the lead agency relative to SEQRA. Until the Planning Board issues its ultimate environmental review determination the ZBA will not be able to take any action. That comment does not go to whether or not the public hearing can be closed but merely to the timing of the ZBA's ultimate decision. Mr. Andrews said he was aware of that. But he wanted the ZBA and Planning Board to be working their way through this simultaneously because there is nothing worse than getting all the way to the end of one process and having dueling comments between boards. If there were comments from the ZBA that needed to be addressed, they

might incorporate them into the package that goes to the Planning Board, and vice versa. At the end of the day they might have a united approval project.

Ms. Swanson said she had taken a look at the Planning Board minutes on this application and it mentioned that they had decided lead agency without circulating. Was that normal? Mr. Blass said that would be highly unusual. Mr. Andrews said he had delivered documents to be circulated plus a list of involved and interested agencies so he was under the impression that they did circulate. He said they did not declare themselves lead agency until the April 17th meeting which was subsequent to their initial submission. The ZBA had not received the circulation documents.

Mr. Blass asked if the ZBA had any interest in competing for the title of lead agency. If not, they could cure any defect by determining that they had no problem with the Planning Board being lead agency.

Mr. Blass said that the procedure would be that at the first meeting the Planning Board would declare their intent to be lead agency, circulate and upon completion of circulation declare themselves lead agency.

Mr. Rohrbach said he would like to insure that the referral did happen but because of the proximity to the stream buffer and the fact that there is some proximity to the blanding's turtles habitats near the high school, it should definitely go past the CAC. Mr. Andrews said he believed there were comments from CAC and the NYS DEC.

Ms. Swanson asked if there was any particular reason why the applicant had not been before the Planning Board for a while. Mr. Andrews said one of the reasons may have been his fault. The other reason is that one of the issues that the Planning Board raised also required that they advance themselves with respect to the septic designs so that they could answer all their questions in order to get the septic in. They are expecting to be on the Planning Board agenda for October. Their major concerns were from the Stormwater Management Consultant concerning stormwater management. Until it would be known where the septic were going and how they were going to place the houses, he didn't want to waste his time.

Ms. Swanson said she had seen "For Sale" signs on the property and wondered if there was any significance to that. Owner, Mr. Pat Reilly said that was an old sign.

Mr. Bisceglia made a motion to open the public hearing. Mr. Rohrbach seconded and the motion carried unanimously.

There being no comments from the public, Mr. Bisceglia made a motion to adjourn the public hearing, and await a response from County Planning and a negative declaration under SEQR from the Planning Board (or a positive declaration, in which case there would be an EIS).

Mr. Bisceglia told Mr. Andrews that he thought this was a relatively reasonable plan. Whether it goes through or not is another issue. He noted that the wetlands are not state or federal but they are treating them in an appropriate manner. It is a reasonable attempt to get a subdivision compared with what they had tried to do previously.

Ms. Swanson asked if they could consider a site visit at some point. Mr. Bisceglia said two members were not present that evening but when they have a full board they will address that.

Mr. Bisceglia then again made a motion to adjourn the public hearing to the November 3, 2014 meeting. Mr. Rohrbach seconded and the motion carried unanimously. PUBLIC HEARING ADJOURNED TO NOVEMBER 3, 2014

9-14-03 USE VARIANCE: GARY E. BECK JR., Z3 CONSULTANTS (OWNER, JAMIE TURELL), 275 EMANS ROAD, LAGRANGEVILLE, NEW YORK Grid No. 6559-01-465994

Seeking a use variance in order to permit light industry in an R-120 zoning district. Chapter 240-27 Schedule of Permitted Uses & Special Use Permits does not permit light industry in an R-120 zoning district.

Gary Beck Jr. of Z3 Consultants was present to represent the application. He introduced the owner, Jamie Turell of 273-275 Emans Road and her property manager, Alan.

Mr. Beck presented the agricultural data statement that Dutchess County Planning requested. Mr. Beck offered to deliver the County's copy to them. The board said that would be acceptable.

Mr. Beck explained that they were before the board for a use variance for light industry in an R-120 zoning district. It is a piece of property that Jamie Turell has officially owned since 1999 but has been in her name since 2005. Originally her husband had been her partner. Ms. Turell's intent was to farm the property. However, it is too expensive and she has had some things come up over the years. Mr. Beck got involved in 2011 to help bring the buildings into compliance with the fire code and the building code. It has taken them 3 years in order to make that happen. This was a processing plant from the '60's as far back as he could research. In the 1980's, as seen on the map before the Board, the barn burnt down and the slab is still there. Ms. Turell had been before the Planning Board in the past and one idea was to put a kennel there. Due diligence was done to see if any money could be made and the money that had to be put into it. That fell by the wayside. After correcting the violations that were there they came up with light industry. Without being specific for a bunch of reasons, it could be anything from warehousing to a finished product like finishing granite for counter tops.

Mr. Blass said County Planning requires the agricultural data statement so the board could not take any action tonight even if they wanted to. This is an application for a use variance and he was sure the board was aware of the heightened standards that apply to a use variance application as compared with an area variance application. The hallmark standard is the real property could not realize any reasonable return on investment if used for any of the uses allowed for the property in this zoning district under the local zoning law. By case law that typically requires dollars and cents proof as to why there cannot be a reasonable return on investment from any of the permissible uses. The primary core permitted use in this district is residential. Parcel Access shows that it is a parcel of 12 acres on Emans Road assessed at \$420,000 for land plus building, and assessed for land only at \$232,000. So that is an entrée into dollars and cents indicators with respect to whether or not there could be any reasonable

return on investments for a use allowed within the zone. Mr. Blass said that is really what the core inquiry is about on a use variance.

Mr. Bisceglia asked if they have to go back a certain time or do they just have to state present property values and also what money can be made as of today. Mr. Blass said as of today.

Mr. Beck said they had realtors out to the site numerous times. It falls back to light industry. He asked if the board had made a site visit. Mr. Bisceglia said he understood there was a granite place there. Mr. Beck said that was correct. Mr. Beck said over the years people have occupied those buildings without any knowledge of not being permitted. Around 2011 it was brought to their attention, and that was when it was decided by Ms. Turell to hire Mr. Beck to try and bring the property into compliance and legalize the use. Since then there has been a number of things that have happened, financially, family wise, evicting people. There was someone who backed into the garage which was another setback. They had to repair the damaged walls, the door and the roof.

Mr. Bisceglia referred to the survey that the board had received dated 2011. He asked if all the buildings shown, including a burned out foundation exist now. Mr. Beck said yes. Mr. Bisceglia asked if they had square footage of the buildings. He said the general location of the property is reasonable for what they are proposing but they have to go through some hoops in order to establish that. He asked if his client was willing to do so, and provide the board with all the financials that are required for this variance. Mr. Beck said yes.

Mr. Bisceglia asked if all the adjoining property owners had been notified. The secretary said all property owners within 500 feet had been notified.

Ms. Swanson asked if the buildings were part of a nonconforming commercial or industrial use that is now zoning residential. Mr. Beck said it was zoned residential when the apple orchard was there. It is no longer being operated as an apple orchard. There is storage there but it is not apples, cherries, peaches, etc. It is nothing like that. It has been R-120 for many years. Mr. Bisceglia said the property had not laid fallow, it was always operating doing something. Mr. Beck said that was correct.

Mr. Bisceglia made a motion to open the public hearing. Mr. Rohrbach seconded and the motion carried unanimously.

There were no comments from the public.

Mr. Bisceglia asked if there was SEQR action that had to be addressed. Mr. Blass said this is a use variance so it is subject to SEQR. He said it is definitely not Type II which is SEQR exempt. It is either going to be Type I or Unlisted Action. He thought it might be Unlisted Action but he would have to check that out. Since there will be at least a month's delay with respect to the agricultural data statement, he will have time to find out.

Mr. Swanson said they also have to refer a use variance to the Planning Board.

Mr. Bisceglia said what they needed to do was give the applicant a list of items of what the board needs from them and a date that the board will reconvene.

Mr. Bisceglia asked if they require the financial information at this point. Mr. Blass said it will be up to the applicant to produce something. He thought the applicant should take the use table which is part of the application and go down the permitted uses in the R-120 zone. Mr. Beck said what is permitted and not permitted is addressed in the application. Mr. Blass said what a court issue might be would be the numbers that are relevant to demolishing what is there now, and subdividing it for the potential maximum single family development in an R-120 zone on Emans Road. That would appear to be the alternative of the highest potential return on investment. So it would be stepping away from survival of the buildings in their current state and focusing on demolition in aid of a residential subdivision and return on investment of a residential subdivision. That would be the key comparison.

Mr. Bisceglia said that would be a comparison but he felt that the applicant is in a state of trying to establish income from a property that she owns. That is his take on the issue at hand. Mr. Beck said that is correct.

Mr. Beck pointed out that there were only five neighbors that had to be notified within 500 feet of the property. They are all very large parcels and three of the five belong to the Whortekill Rod & Gun Club.

Mr. Bisceglia reminded the applicant that a use variance is more difficult to obtain than an area variance. There are more stringent requirements.

Ms. Swanson asked what is the procedure for referral to the Planning Board. Mr. Blass said that should be done this evening.

Mr. Bisceglia made a motion to adjourn the application to the October 6, 2014 meeting. Mr. Rohrbach seconded and the motion carried unanimously. PUBLIC HEARING
ADJOURNED TO OCTOBER 6, 2014

Mr. Bisceglia reminded the applicant that they will need a comparison of doing a subdivision cost and potential of money being made through that aspect. Also a response will be awaited from Dutchess County Dept. of Planning & Development

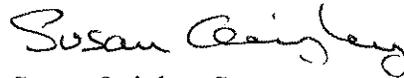
Mr. Blass said he would have to get an answer to the board concerning whether it will be a Type I or Unlisted Action. In order to type the action, it is important to try and define the action first. Right now the action is an application for a use variance to allow any light industrial use on this property in the R-120 zone without identifying any particular light industrial use. Mr. Blass thought that probably if a use variance was granted for any light industrial use the question then arises as to whether they would need Planning Board site plan approval for that activity when and if it ripened into a specific undertaking. The question then was there any specific light industrial use a part of the application today. Mr. Beck said right now that was open.

Mr. Bisceglia asked Mr. Blass if, when granting a use variance, does that run with the property for life or does it run with the owner. Mr. Blass said that, unless the owner was to stipulate and agree that it runs only with the owner, it will run with the land for ever. Mr. Bisceglia said Mr. Beck might want to discuss that with his client.

Mr. Bisceglia made a motion to refer the application to the Planning Board. Ms. Swanson seconded and the motion carried unanimously. REFERRAL TO PLANNING BOARD.

Mr. Bisceglia made a motion to close the meeting at 8:35 p.m. Mr. Rohrbach seconded and the motion carried unanimously.

Respectfully submitted

A handwritten signature in cursive script that reads "Susan Quigley".

Susan Quigley, Secretary