

**Town of Fishkill  
Zoning Board of Appeals  
July 17, 2007**

**Minutes**

**Members Present**

Maureen Kangas-Vice Chairman  
Lynne Raver  
Marc Breimer-Alternate  
April Callahan-Alternate

**Members Absent**

Barry Silverstein-Chairman  
Ronald Critelli  
MaryAnn Leenig

**Other Officials Present**

Janis Gomez Anderson, Esq. – ZBA Attorney

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Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning and the surrounding property owners.

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The meeting of the Zoning Board of Appeals was called to order at 7:07 p.m. by the Vice-Chairman. She made announcements regarding the no smoking policy and the emergency exits and fire procedures. The Vice-Chairman informed those present of the procedures regarding the ZBA.

The Vice-Chairman announced that Alternate Members Marc Breimer and April Callahan were on the Board for this meeting with full voting rights.

**Minutes**

Vice-Chairman Kangas called for motion to accept the minutes from the June 19, 2007 meeting.

Marc Breimer made the motion to accept the minutes as written from the June 19, 2007 meeting.

April Callahan seconded.

Motion Carried

Maureen Kangas – Aye  
Lynne Raver – Aye  
Marc Breimer – Aye  
April Callahan – Aye

### **Meeting Date Change**

Vice-Chairman Kangas announced that the date for the ZBA meeting scheduled for September has been changed to September 11, 2007. She advised that the meetings are normally scheduled for the third Tuesday each month but this meeting will be scheduled for the second Tuesday.

### **Beacon Hills Moratorium**

Vice-Chairman Kangas deferred to ZBA Attorney Janis Gomez-Anderson. Ms. Anderson advised that the Town Board enacted a moratorium regarding development in Beacon Hills. This prevents this Board from processing any applications for variances in the Beacon Hills neighborhood. She stated that a copy of the law is on file at the Town Clerk's Office for anyone interested. This law went into effect on Monday (July 16, 2007) when it was filed with the Secretary of State and will be in effect for 180 days.

Ms. Anderson advised the Board that at the ZBA Chairman's request, she contacted, in writing, each of the applicants affected by the moratorium and enclosed a copy of the law with notice to each that they do have the opportunity to apply to the Town Board for a variance from the moratorium. If granted, the applicant will be allowed to return to the ZBA continue the process of their appeal.

### **New Business**

Appeal Number 1

Application Number ZB07-009, submitted by James Count, requesting a 15ft variance creating a 25ft rear yard setback where 40ft is the minimum to maintain an existing deck. Said request is a violation of Chapter 150-30 H (3)c of the Code of the Town of Fishkill.

The Vice-Chairman read communications from the following  
DC Department of Planning citing this as a matter of local concern  
Ozzy Albra stating no objection to this appeal  
Douglas Cole, Lucas Lane stating no objection  
Stephen Lucas, Lucas Lane stating no objection

The Vice-Chairman called for the representatives  
James Count, Applicant and Robin Celesky presented to the Board. Mr. Count corrected his name for the record that it is Count not Court. Mr. Count stated that he has no plans to change his deck and is only looking for permission to keep the current deck. Ms. Celesky stated that the deck was there when they purchased the house. Mr. Count advised that it was built eight years ago.

Lynne Raver asked how long they have been in the house. Mr. Count advised one year.

Vice-Chairman Kangas asked if they have been advised of the problem with the deck when they purchased the house. Mr. Count stated that he was aware of the situation but he went ahead with the closing because the previous owner promised that he would take care of the paperwork. He commented that he still does not have the proper paperwork and he has since received a letter from the Town regarding it.

Marc Breimer asked what the dimensions of the deck were. Mr. Count stated that it has an irregular shape and wraps around the side of the house. Mr. Breimer reviewed the drawing from the application. Janis Anderson commented that the stairs are the closest point at 25ft and the actual deck is 27ft from the property line.

Janis Anderson advised the Board that a previous applicant did have a variance for a 30ft setback but built deeper than the variance allowed.

Vice-Chairman Kangas asked if the Building Inspector has inspected this deck. Mr. Count confirmed that he has and that the previous owner had to make some adjustments. He stated that when they applied for the variance the Building Inspector indicated that the deck was compliant and that he only needed the correct paperwork and approval from the ZBA.

Vice-Chairman Kangas asked for an opinion from the ZBA Attorney regarding a deck that has been in existence and use for several years. Does the applicant need to go any further by needing plans or any further representation. Janis Anderson advised that nothing further is needed because the applicant submitted a scale drawing of the deck. She asked the Applicant if a CO has ever been issued for the deck. Mr. Count stated that it does not have a CO. Ms. Anderson advised the Board that if they grant the variance, the Applicant will then go back to the Building Department and the Building Department will then inspect it and if it is up to code, will issue a certificate of occupancy.

Vice-Chairman Kangas stated that she approves of the process and that they are only concerned for the Applicant's safety. She wouldn't want someone constructing something and then have somebody get hurt. Ms. Anderson stated that although it is the process, the ZBA can make that a condition for approval.

April Callahan asked if the footings had been inspected. Mr. Count stated that the Inspector had been out a couple of times. Ms. Callahan asked if one of the footings had to be dug up to verify the depth. Mr. Count confirmed that the footings were exposed and inspected. This process was started prior to him moving into the house. The Inspector made the previous owner replace all of the brackets on the underside of the deck. He commented that the previous owner had to make several adjustments to the deck to make it compliant. Mr. Count commented that the previous owner had a meeting with the Building Inspector but does not believe that he showed up for it.

Janis Anderson asked the name of the previous owner. Mr. Count replied that it was Tim Owen. Mr. Count asked for confirmation that Mr. Owen did not show for his meeting. Nancy Lecker confirmed that there was a meeting scheduled and the ZBA deadline was postponed until the end of August to accommodate him and still get him on the September ZBA schedule. He did not show up and failed to submit the application. Mr. Count reiterated that Mr. Owen promised to complete everything.

Ms. Anderson commented that the ZBA has the right to request that the Building Inspector inspect the deck prior to granting a variance or if the Board feels they may grant it, have the Inspector go out after it is granted. Vice-Chairman Kangas stated that she was comfortable with granting it and then have the Inspector proceed with the inspection.

Marc Breimer made the motion to Close the Public Hearing

Lynne Raver seconded

Motion Carried

Maureen Kangas – Aye

Lynne Raver – Aye

Marc Breimer – Aye

April Callahan – Aye

The Vice-Chairman advised the Applicant that the Hearing is Closed and will be voted on at the next meeting.

### Appeal Number 2

Application Number ZB07-010, submitted by Demetreus Moustakes for the Quality Inn, requesting a variance to install a monument sign at the entrance of the hotel driveway where a sign is not allowed in a GB Single Use Zoning District. Said request is a violation of Chapter 150-30 of the Code of the Town of Fishkill.

The Vice-Chairman read communications from the following DC Department of Planning citing an objection to the variance request and advised that this should be applied for as a use variance and not an area variance. The DC Department of Planning advised that if the ZBA approves this request it must do so by a majority plus one of the full membership with notification to the DC Department of Planning with the reasons for the approval. Janis Anderson advised the Board that the legal interpretation taken by this Board is that it will be considered an area variance stating that it is not the underlying use of the property being changed only a sign and signs are allowed in the district.

NYS Thruway Authority stating no objection to the appeal

Town of Fishkill Planning Board offering a positive recommendation and suggested that if the ZBA grants the request for the monument sign that the sign conform to all requirements of the Town Code.

The Vice-Chairman called for the representatives Demetreus Moustakes, Applicant, presented to the Board.

Vice-Chairman Kangas asked for verification that the sign that is currently on the building is facing the neighborhood and they want to move it to the I-84 side of the building. Mr. Moustakes corrected her and advised that they were originally allowed two signs for the building. They changed to one sign requesting the side of the building facing I-84. It was approved by the Planning Board and then the approval was revoked. He went before the Planning Board again to request a monument sign on Route 52 to guide travelers from I-84 to the building. They currently have a sign on the building facing I-84. Janis Anderson advised that the other variance request is to legalize the sign since it is not on the principal façade of the building. Mr. Moustakes reiterated that there was some confusion at the Planning Board regarding the signs. He advised the Board that without identification for the hotel, he is currently having problems with delivery trucks missing the entrance.

Janis Anderson asked for verification that two variances are being requested. Nancy Lecker confirmed that the original variance was for the monument sign and a revised variance statement was sent to the Board Members for the wall mounted sign not being on the principal façade. Janis Anderson reiterated that the Planning Board approved the sign to face I-84 and after the meeting they determined that it did not comply with code requiring the sign to be on the principal façade which is normally defined as the front of the building.

Vice-Chairman Kangas asked how travelers are supposed to know where to enter the building. Ms. Anderson commented that legally the sign would go on the principal side of the building. She asked which direction the front of the building faced. Mr. Moustakes advised that it faced the doctor's office. Ms. Anderson commented that the code is not written clearly as to whether the Planning Board has the authority to allow an applicant to place a sign on a location other than the principal façade. The Planning Board Attorney interprets it to say they do not have the authority to vary the location of the sign. With reference to having a second sign or monument sign, these are not allowed and the Planning Board does not have the authority to vary the code.

Marc Breimer commented that it would be pointless to have the wall sign anywhere except the side that faces I-84. It is a hotel serving travelers and the tourist industry and should be able to be seen from I-84. This Vice-Chairman agreed.

Vice-Chairman Kangas commented that the hotel should also have a sign on Route 52 to guide travelers since everyone travels down roads, sometimes not knowing where to turn. Marc Breimer agreed. He commented that there is an entrance for the diner, one for the hotel and one for the ice cream shop.

Vice-Chairman Kangas stated that if someone pulls into the wrong entrance they will then have to make a u-turn or back out which is not safe.

Janis Anderson commented that there is a provision in the code for the Planning Board to vary the location of the sign if the building can not be seen from the road. It does not apply to the GB District and the intent of the code may have been for the Planning Board to have that authority but it is not written that way.

Ms. Anderson reminded the Board that if they grant the variances that the Planning Board recommends that the approval includes compliance with the requirements of the code. The sign currently proposed does not meet the code. Ms. Anderson advised the Board that the current monument sign is 5ft x 5ft. April Callahan asked if the Applicant knew the height of the sign. Mr. Moustakes stated that the sign would be 5ft high by 5ft wide. Ms. Anderson asked how tall the base was. Mr. Moustakes stated that it is also 5ft. Ms. Anderson asked for verification that the sign would stand 10ft high. Mr. Moustakes corrected himself and stated that the base was ground level. He stated that when he went to the sign company to design it there was some confusion with the new sign code. He stated that someone from the sign company went to the Town Hall and designed it in accordance with the new laws. Mr. Moustakes stated that the sign can be redesigned to any specification. Ms. Anderson commented that the ZBA can look at this and make a decision concerning the size and shape of the sign.

Vice-Chairman Kangas commented that Mr. Moustakes is trying to work with the Town to do the right thing but she felt that the ZBA also needs to do the right thing by alerting travelers where to turn in. The ZBA approved the hotel and now needs to approve a safety issue concerning people turning in and out of the facility.

Ms. Anderson read the current code that each face of the sign can not be more than 20 sq. ft. and the current proposed sign is 5ft by 5ft which would have to be changed to 5ft by 4ft to accommodate the code. The sign will be at least 15ft from the road, and the maximum height including the base is 6ft. If the sign is going to be 5ft high, this will leave only a 1ft base. Mr. Moustakes stated that he will get the correct measurements and redesign the sign to fit into the code. Vice-Chairman Kangas commented that the Applicant is willing to conform.

The Vice-Chairman called for a motion to Close this Public Hearing

Lynne Raver made the motion to Close the Public Hearing

Marc Breimer seconded

Motion Carried

Maureen Kangas – Aye

Lynne Raver – Aye

Marc Breimer – Aye

April Callahan – Aye

## **Deliberations**

### **07-009, Count**

Marc Breimer commented that the deck is existing. Vice-Chairman Kangas stated that they bought the house and then get a letter from the Town. Ms. Anderson stated that the Applicant was aware of the problem with the deck when he purchased the house but trusted the previous owner to complete the paperwork. This information will show up on a municipal search. Mr. Breimer commented that he commends the Applicant for following through on the process. He was disturbed that the previous owner did not follow through on his promise.

### **07-010, Quality Inn**

Vice-Chairman Kangas stated that the Applicant has been trying to work with the Town to do the right thing. Ms. Anderson asked if it was the wish of the Board to make it a condition of the approval that the monument sign be reduced to meet the code. She stated that the ZBA has the authority to vary the code. The Vice-Chairman stated that it should meet the code. Vice-Chairman Kangas commented that if there isn't proper signage people start to turn in to any location and doing u-turns. This is a safety issue. She stated the Mr. Moustakes did not show any apprehension when asked to reduce the size. Lynne Raver agreed.

Janis Anderson advised the Board that they need to override the DC Department of Planning and give the reasons for overriding it if the variances are granted. Ms. Anderson stated that the ZBA's legal interpretation is that it is not a use variance. The County Planning based most of their decision on a use variance standard which he would not qualify for. The area variance standards are different. The Vice-Chairman agreed.

## **Miscellaneous**

Janis Anderson asked if any new application had been received for the August meeting. Nancy Lecker commented that there were none. Ms. Anderson commented that the meeting for August will consist of only the two votes.

Vice-Chairman Kangas called for any additional business. Hearing none, she called for a motion to Adjourn the ZBA Meeting.

Marc Breimer made the motion to Adjourn the ZBA Meeting  
Lynne Raver seconded  
Motion Carried

Meeting Adjourned at 7:36 pm

Respectfully Submitted,  
Nancy Fitzgerald-Lecker  
ZBA Clerk