

**Town of Fishkill  
Zoning Board of Appeals  
March 16, 2010**

**Minutes**

**Members Present**

Barry Silverstein-Chairman  
Lynne Raver  
MaryAnn Leenig  
Marc Breimer-Alternate  
Al Campanaro-Alternate

**Members Absent**

Maureen Kangas – Vice-Chairman  
Ronald Critelli

**Other Officials Present**

Audrey Friedrichsen Scott, 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, The Building Inspector and the surrounding property owners.

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The meeting of the Zoning Board of Appeals was called to order at 7:09 p.m. by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures. The Chairman informed those present of the procedures regarding the ZBA.

The Chairman announced that Alternate Members Marc Breimer and Al Campanaro were on the Board for this meeting with full voting rights.

## **Minutes**

Chairman Silverstein called for comments or corrections to the minutes of the March 2010 meeting. Hearing none, he called for a motion to accept the minutes as written.

Lynne Raver made the motion to accept the minutes as written from the March 2, 2010 meeting.

Al Campanaro seconded.

Motion Carried

Barry Silverstein - Aye

Lynne Raver - Aye

MaryAnn Leenig - Aye

Marc Breimer - Aye

Al Campanaro - Aye

## **New Business**

Grid Number: 6356-03-136235      Address: 14 Old Grange Rd

Application Number ZB10-002, submitted by Manuel Pragana, requesting a 9ft 6in variance creating a 14ft 6in left side yard setback where a 25ft setback is the minimum in an R-40 Zoning District. This setback will be created when a breezeway roof is constructed from the main structure to an existing detached garage. Said request is a violation of Chapter 150-33.A of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

The DC Department of Planning citing this as a matter of local concern

The Town of Fishkill Planning Board citing that they have no opposition to this project.

The Chairman advised that notification was also sent to the NYS DOT and the Town of East Fishkill who did not comment.

The Chairman called for a representative. Manuel Pragana presented to the Board.

Mr. Pragana advised that he is looking to construct a 6ft by 7ft breezeway to attach his house to his garage. He stated that his mother is moving in with him and they will be using the garage for storage. He stated the purpose of the breezeway is for covered access to the garage.

Mr. Pragana presented a plot plan to the Board for their review.

Al Campanaro commented that he did a site visit and it doesn't appear to be a very big space. He commented that the garage will remain as it is. He stated that if the ZBA approves this appeal, it could be noted that the approval was based on the fact that no one was to occupy the garage. It must remain strictly for storage and the breezeway is constructed as access to the garage without having to go outside.

MaryAnn commented that she agreed that it didn't look like a very large.

Mr. Pragana commented that the area won't be much bigger than the table in front of the Board.

Mike Mason, 19 Old Grange Rd, stated that he has no problem with project.

Vincent Porcelli, adjacent neighbor stated that he has no objection and his property is connected to Mr. Pragana's.

The Chairman called for a motion to Close or Adjourn this Public Hearing

MaryAnn Leenig made the motion to Close the Public Hearing

Al Campanaro seconded

Motion Carried

Barry Silverstein - Aye

Lynne Raver - Aye

MaryAnn Leenig - Aye

Marc Breimer - Aye

Al Campanaro - Aye

Audrey Scott asked if the ZBA had officially opened the public hearing. Chairman Silverstein stated that it was not something that was normally done. He commented that it was this Board's normal practice to read the application and proceed. He asked if the ZBA needed to officially open it. Chairman Silverstein commented that they would discuss it after the meeting.

### **Deliberations**

Chairman Silverstein stated that he has no objections at this point to the project. He reminded those present at the meeting that comments made during deliberations should not be judged as to the outcome of the vote. Members of the Board may revisit the site and have different feelings at the next meeting.

MaryAnn Leenig commented that she didn't have a problem with it. She stated that it may enhance the look of the property. She commented that she has always liked the look of a breezeway connecting a house to a garage.

Marc Breimer stated that it was a minimal functional modification and he can see no problems with it.

Al Campanaro commented that he did a site visit. He reiterated that no one was going to be living or renting the garage area. He commented that it was strictly storage.

Ms. Leenig commented that the neighbor's comments were very important and that no one had any objections.

## **Board Discussion**

### Land Use Development Permit for Joseph Precour, Lead Agency Status

Chairman Silverstein reminded those present that this is only a Board discussion regarding the Lead Agency for this application. He stated that this is not a Public Hearing and that there will be no comments or questions from the Floor. The Chairman reminded the Board that this application was before the Board and then the moratorium was enacted.

Chairman Silverstein allowed Bill Povall, Povall Engineering to present to the Board. Mr. Povall gave the Board the history of the property and past ZBA applications. He reviewed the actual variances.

Mr. Povall reminded the Board that this project involves the combination of two lots on the west side of Brookside Rd between Willow and Joy. There is an existing stream in the rear of the property.

Mr. Povall reviewed the original and revised variances for the Board. He stated that in 2004 an application was submitted for only lot 13 and there were six variances requested. The ZBA decided that the lot was too small for building and recommended at the meeting on May 18, 2004 that the applicant do some research to purchase the adjacent lot, which was also vacant. The applicant did go into an agreement to purchase lot 12 and then submitted a new application to the ZBA. With the additional lot the plan was then changed and the house was moved further to the south to maximize the distance from the house to the rear of the property. Their intention was create a more uniformed look with the other houses in the neighborhood.

The newest application will still require five variances, the front and rear yards, lot depth, maximum lot coverage and impervious surfaces. This was submitted in 2007. Working with the ZBA for approximately four months the applicant was able to eliminate the lot coverage and imperious surface variances by changing the driveway configuration and pavement. In July 2007 the Town Board enacted the moratorium against any building or development in Beacon Hill while they worked on a new local law.

In May 2009 the Town Board created the new zoning district and the moratorium was lifted. One of the restrictions with the new law was that any development in Beacon Hills requires the applicant to appear before the Planning Board for a development permit. The Planning Board reviews the proposal for various environmental issues such as flooding, drainage and grading. Mr. Povall stated that they have been in front of the Planning Board for several meetings and public hearings. They have address comments from the Board the town engineer and the public. He commented that the Planning Board recommended that this application be presented to the ZBA for comments and recommendations regarding the environmental issues. Mr. Povall commented that if they receive a favorable decision from the Planning Board then they will appear before the ZBA again for the variances. He noted that this would be a condition of any approval they give.

Mr. Povall stated that they will appear before the ZBA for a front yard setback. Their proposal sets the house in line with the other houses in the neighborhood; 33ft from the front setback when then need 35ft. They will be requesting a 2ft variance. The code requires that the house be set back 60ft from the center of the road. Due to the structure of the road the property line comes to the edge of the road requiring an 18ft variance from the center line. Mr. Povall pointed to an aerial view of the neighborhood and stated that this house will be consistent with the surrounding properties in the development.

Mr. Povall continued stating that a 30ft variance will be required for the rear setback as 40ft is required. He stated that they shifted the house to the left as far as they could to open up as much of the rear property as possible. The northern corner of the house will sit 10ft from the actual property line. Mr. Povall pointed out to the Board that this property does not abut the neighbor's property to the rear. The back of the this property abuts a parcel of land approximately 75ft wide belonging to the Town for the maintenance of the stream that runs through it. By positioning the house in this location it maintains a similar orientation for the neighborhood when you drive down the road, balancing the front and rear yards and leaves approximately 150ft from the back of this house to the closest house behind it. He commented that the distance is almost double the distance between two houses on normal lot with a 40ft setback.

Mr. Povall concluded with the last variances with the combination of the two lots. The closest point of the combined lot depth is 71ft and the requirement by code is 125ft. They will be requesting a 54ft variance for the lot depth. The total square footage of the combined lot will be 10,713 and the requirement by code is 20,000. They will be requesting a variance for the lot size.

Mr. Povall summarized the presentation stating that they have been taking the recommendations of the various boards working with this project to get where they are at this moment. The largest change from the original application to this one, was the entering into a contract with the owner of the adjacent lot to combine the two lots to create one parcel.

Lynne Raver recused herself from the Board discussion as she resides within the 500 boundary line of the property to be discussed.

Chairman Silverstein asked the attorney if Ms. Raver could remain seated or should she move to the audience. Audrey Scott commented that was immaterial and some board members leave the room when they recuse themselves other remain seated. Chairman Silverstein asked if she could remain seated. Ms. Scott stated that it would be ok.

Audrey Scott did a follow up to Mr. Povall's presentation and where the application is procedurally since the application has been before the ZBA in the past and the difference with the acquiring of the additional lot. She advised since the Beacon Hills Zoning District has been created it requires a site development permit from the Planning Board. Applicants will be going back and forth between the two boards the Board.

Ms. Scott stated that the applicant is officially before the Planning Board to get the permit and reminded the Board that the ZBA consented to the Planning Board to act as Lead Agency for the environmental review of the application. The ZBA will be dealing a little with the intersection of the environmental issues and the standards the ZBA applies when considering area variances. There will be a consideration with the five variances requested, although two of the variances, the front yard and center line setbacks, are within the same realm. The variance for lot coverage has been eliminated. She reminded the Board the one of the criteria for variances is balancing the detriment to the neighborhood against the benefit to the applicant, but what the Planning Board is looking for in their SEQRA review is the environmental impact for the project. Normally as an involved agency the ZBA is part of the process for granting a permit. Ms. Scott gave an example of the DEC commenting on the impact of a stream or wetlands. They would not comment on any other aspect of the project, such as traffic, that is part of the Lead Agency's review but not the responsibility of the involved agency.

Ms. Scott reminded the Board that this is only an intersection between the ZBA standards and the environmental questions and the Board must be careful not to make a pre-decision regarding the variances that the ZBA will be asked to review. The purpose of this is for this Board to review and comment on the concerns regarding the environmental issues. What the Planning Board is looking for from the ZBA is after your discussion and questions to the applicant, comments will be sent back for the Planning Board to use when considering its determination of significance.

Chairman Silverman thanked the attorney for the comments stressing the importance of understanding how to question and answer questions that may or may not reflect the Board's views on how they may vote on the variances. He expressed his concern that a predetermination may be construed by the discussion regarding this project, the new zoning laws that are now in effect for Beacon Hills and what the outcome may be if the Planning Board approves this project and the applicant again comes before the ZBA.

MaryAnn asked if the applicant has purchased the second lot. Mr. Povall advised that the owner is in contract to purchase the second lot. Ms. Leenig commented that when the applicant first appeared before the ZBA, it was recommended that he purchase the adjacent lot. She stated that although the zoning laws came into effect in 1962, the rules have changed. There are water problems in Beacon Hills. There was a moratorium and now there are new rules and they have to be followed. Ms. Leenig commented that the applicant is asking for several variances.

Mr. Povall commented that the applicant understands that the rules have changed. They understand that the town requires additional permit regulations; the applicant must submit a land development permit to the Planning Board. The Planning Board reviews the application. Mr. Povall stated that one of the components of the application is to address all of the environmental impacts. They are working with the Planning Board to address all of the issues. He commented that although several regulations have changed, the zoning setbacks, lot depth and width did not change. Chairman Silverstein agreed and reiterated that the area variance requirements did not change.

Mr. Povall stated that they are not asking for any larger or more stringent variances than they had prior to the moratorium. He commented that he understands that the Town has concerns with the area and that was one of the reasons they adopted this new local law to look into the environmental concerns and then design a new permit process.

Mr. Povall reiterated that Mr. Precour owns the property and wants to construct a home on it. It was recommended that he enter into an agreement, which he did, to purchase the second lot to improve his land area and reduce the lot size variance.

Ms. Leenig stated that the applicant did not purchase the property. Mr. Povall stated that the applicant is in contract. Mr. Precour verified that he is in contract.

Mr. Povall stated that they are working with the Planning Board and that the Board is asking serious questions and dealing with all of the issues. Mr. Povall stated that the position of the house on the combined lots is consistent with the other homes in the neighborhood. Chairman Silverstein commented that the alignment would be consistent in the front but his concern was the rear of the property. There doesn't seem to be much. Mr. Povall stated that there is enough to maintain the property. He commented that his view of a setback is to leave enough room for your neighbor. This property abuts an open common parcel which buffers the rear home. The areal view shows that even the rear separation is consistent with the other homes in the area.

Ms. Leenig commented that there are problems with the water pressure and septic systems in the area. Mr. Povall reiterated that those issues are also being dealt with as part of the Planning Board process.

Ms. Leenig stated that this will be a threat to the community. She reiterated that there are water problems, residents having flooding problems and water being diverted from one property to another. Mr. Povall reiterated that the Planning Board was addressing those issues. Chairman Silverstein commented that although the issues may be of concern to the ZBA, they are currently under the purview of the Planning Board as Lead Agency. Mr. Povall commented that if the ZBA wanted to discuss all of the issues, he was prepared to do so. The Chairman declined and stated that the Planning Board would keep the ZBA informed.

Audrey Scott advised that as part of the SEQRA review the Planning Board is charged with identifying all of the environmental issues and determining whether any aspect needs further studying to determine if there will be an adverse impact. She advised Mr. Povall that it may be helpful to the ZBA if he provided them with a list of relevant issues that are currently being addressed by the Planning Board. This will give the ZBA time to determine if there are any additional environmental concerns. She noted that that the word environment is very broadly defined under the law and can include questions regarding zoning compliance and neighborhood impacts.

Chairman Silverstein asked Mr. Povall if he had the list of issues being addressed by the Planning Board. Mr. Povall confirmed that he did. The Chairman asked if he was prepared to address them with this Board. Mr. Povall advised that he was prepared. Mr. Povall began with the concern with the flooding in the area and the house proximity to the stream. The Planning Board required the applicant to have a study of the 100-year flood elevations and drainage analysis. They are working on these with the Town Engineer. This has already been documented. The next concern was erosion of the stream because of the bend in the stream behind the home. They are stabilizing the embankment to avoid further erosion. Comments were made regarding the location of the home so close to the stream. Although it is noted that the house will be set ten feet from the stream, they are addressing that issue because the house will actually be thirty feet from normal stream elevation and twenty five feet from the stream embankment. This is being clarified for the Planning Board and handled with proper engineering.

Mr. Povall stated that in regards to the flooding issue with the neighboring basements, this particular lot drains directly into the stream. It has swales on both sides of the property and storm water management systems diverting the water into the stream. Ms. Leenig stated that the stream would then overflow and flood an adjacent property. Mr. Povall disagreed and stated that an analysis had been done and determined that there would not be an impact. He stated that the house and driveway is a small fraction of the overall drainage system so regarding the storm water issue there is no measurable increase. He reiterated that all of this was being addressed by the Planning Board.

Mr. Povall continued with the issue of impervious surfaces. He stated that they moved the garage to the front of the house. That eliminated the driveway going along the side of the home. Additional concerns were regarding flooding. Test holes had been done on two separate occasions. They have Health Department approval for the septic system. The tests revealed no ground water within nineteen feet of the surface. Because of the size of the lot, the applicant was required to use seepage pits which are deep in the ground. The testing was witnessed by the Health Department. Mr. Povall also stated that the house will not have a basement, so it is an on-grade raised ranch style home.

Mr. Povall reiterated that the main concerns were storm water, the ground water conditions, basement flooding and the erosion of the stream.

Chairman Silverstein asked if there were any additional questions regarding environmental issues. None Voiced. The Chairman reiterated that his concern was the limited distance in the rear of the property but acknowledged Mr. Povall's information regarding that actual distance to the stream.

Chairman Silverstein asked if the Planning Board was addressing the water pressure concerns. Mr. Povall stated that they received a letter from the Town Board granting permission to hook up to the town's water supply. It was required as part of the Board of Health approval. It has already been completed. The Chairman asked if the pressure would remain at the level it is currently at without reducing the pressure of the surrounding homes. Mr. Povall stated that the water pressure is acceptable in this area.

Marc Breimer commented that his concern was that the variances requested were substantial. The Chairman agreed and stated that the size of the variances will be discussed at a later meeting should the Planning Board grant them approval to proceed with the application.

Al Campanaro asked if the house was going to be two bedrooms or three. Mr. Povall stated that it would be a two bedroom house. Mr. Campanaro asked if there was any thought to building onto it to create a third bedroom. Mr. Povall stated that the proposed house would only be two bedrooms because of the size of the lot, the septic system would only support two bedrooms. He stated that if the septic system would have support a three bedrooms house they would have proposed one. He stated that there is not enough room on the lot for a system that big. The Chairman commented that the applicant would have to repeat the entire process for a third bedroom. Mr. Povall agreed and stated that they would have to submit a new building permit and go through the Health Department again.

MaryAnn Leenig advised that over two hundred petitions were signed and it was proven that there are water pressure problems in the area and this would actually hurt the community. She asked for verification that the applicant received a letter from the town stating the opposite. Mr. Povall reiterated that they received a letter from the town giving them permission to tie into the water system. Ms. Leenig asked about the pressure. Mr. Povall stated that the Health Department reviews items such as the pressure when approving permits.

Ms. Leenig stated that there was a study and there is a problem with the water pressure. Mr. Povall stated that most of the problems are in the higher elevations, not with this lot or the lower areas. Ms. Leenig disagreed and stated that it was the entire Beacon Hills community. She stated that she has lived in the lower area for thirty years and her pressure isn't great. Mr. Povall stated that the Health Department reviews and approves the water supply and sewer disposal. They followed all of the procedures and received their approval.

Ms. Leenig asked when doing the water tests, if it is done after a heavy rain storm or when there is a light drizzle. Mr. Povall stated that he would have to check but his recollection was that one was done in the springtime and one was around the November/December timeframe. Ms. Leenig reiterated that she wanted to know if a test was done after a serious rainfall. Mr. Povall advised that the first perk test was done on Dec 3, 2002. Ms. Leenig asked if a test had been done recently. She asked if he had been in the development recently and watched the water come down the road. She stated that she had pictures if he wanted them. Mr. Povall stated that he is not disputing that there is a lot of water flowing through the stream but stated that the Health Department reviewed the test holes and found no ground water or modeling of the test soil. The test indicated that there is no ground water on this lot. Chairman Silverstein commented that this has already been identified as a concern and would be reviewed by the Planning Board.

The Chairman asked if the Board Members had any additional questions or concerns. None voiced. Audrey Scott asked if the Board Members wanted to summarize their thoughts.

Chairman Silverstein commented that he was confident that the Planning Board was handling all of the ZBA environmental concerns and they were being addressed. He noted that the decisions made by the Planning Board would be based on their findings. The Chairman commented that there were no additional issues voiced by the Board Members. He stated that his concerns were regarding the number and size of the variances. He commented that he was uncomfortable with variances, but some answers would come from the Planning Board. Hardship would be a hard sell as the applicant has stated that he is in contract for the second lot. The applicant has invested money into this project and does not actually own the property. The variances are based on having both parcels but realistically he currently only own one lot.

MaryAnn Leenig stated that zoning came in 1962. The owner should have known the building regulations when he purchased the property. Now all of the regulations have changed. She commented that the original design of the community was for 200 homes and there are currently close to 400 homes built. There is no hardship.

Marc Breimer commented that his only concerns are the number of variances requested and the scale of them.

Al Campanaro agreed that the environmental impacts and variances requested are a concern. He is also concerned about the creek. He stated that he isn't convinced that a four foot wall would be sufficient enough to protect the property. He acknowledged that he is not an engineer, but will do some research. He stated that there are impacts with any construction regardless of the size of the lot. He commented that with the recent weather impacting the area, homes that never had trouble in the past had flooding issues. It is something that the applicant should take a serious look at.

Chairman Silverstein called for a motion to Adjourn the ZBA Meeting.

Marc Breimer made the motion to Adjourn the ZBA Meeting  
Al Campanaro seconded  
Motion Carried

Meeting Adjourned at 8:14 p.m.

Respectfully Submitted  
Nancy Fitzgerald-Lecker  
ZBA Clerk