

## **Zoning Board of Appeals Meeting Minutes**

November 20, 2007

A meeting and public hearing of the Zoning Board of Appeals was held on November 20, 2007 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York to consider the applications of 1) J. McLaughlin Clothing Store for a area variance from the Town Zoning Code Article III, Section 331 (3) signs, to allow an increase in size of the sign at 3724 Route 44, Mabbettsville, continued public hearing from October 16th. The property is in the HM and AQ Overlay District 2) Matthew Pfisterer and Lisa Lahey Pfisterer for area variances from the Town Zoning Code Appendix B, Schedule of Area and Bulk Regulations, to allow continued use of the existing garage at 2444 Salt Point Turnpike, Clinton Corners, Town of Washington. The property is in the RL 5 District 3) Joseph E. Iannucci, 23 Maple Hill Drive, for a variance from the Town Zoning Code Article III, Section 391.7 Nonconforming Uses, Buildings, and Structures. The property is in the RM 2 District 4) Schuyler Woods for area variances from the Town Zoning Code Appendix B, Schedule of Area and Bulk Regulations to allow construction of a three car garage at 86 Stanford Road. The property is in the RM 2 district.

The members present were: Chairman Brad Roeller, Peter Audia, Jerry Baker, Donald Marshall, and John Parisi.

The meeting was called to order at 7:30 P.M. by chairman Roeller.

**A motion to approve the October 16, and October 30<sup>th</sup> special meeting minutes with a correction to the October 16<sup>th</sup> meeting minutes, page 6, paragraph 2, line three, change word grating to granting, was made by board member Parisi, and seconded by board member Baker. All ayes.**

Mr. and Mrs. McLaughlin appeared before the board for the McLaughlin application.

Chairman Roeller addressed board members Audia, and Parisi, and remarked that in their absence at the October 16<sup>th</sup> meeting, there was barely a quorum, some discussion took place on how to proceed; an agreement that it was prudent to adjourn the public hearing until a full board was present was reached.

Chairman Roeller addressed Mr. McLaughlin, said that he was to look at the location and heights to make the sign more visible. Mr. McLaughlin said he enlarged the photos that he presented to the board at the last meeting to see if he could make it any clearer. The first photo presented is basically a representation of the signs that exist on Route 44, Mabbettsville, Diesel Repair, Rollins Landscaping, etc. each of these signs are approximately 4'x3'. Mr. McLaughlin took the next photo from inside his car, attempting to show what a motorist would be looking at when they try to see the current sign. The mailboxes deter anyone from seeing an indication of the sign until they pass the sign.

Mr. McLaughlin explained that the staff at the store continually brought to his attention that people have had a difficult time finding the location of the store. Any advertising, mailings, postcards, sent out about the store, said "between Audia Motors and the Town Pool at the bottom of the mailings." Yet, continuously, people cannot find where that is, they pass the store. Mr. McLaughlin indicated that two of his staff members are present and will answer any questions that the board would like addressed. Mr. McLaughlin stated that numerous times people have passed the store and created an unsafe condition where they have stopped, tried to back up or turn around in a driveway past the store to get back to the location of the store. Traveling at 55 mph is an easy speed that is attained on Route 44 coming down the hill or elsewhere. There is an unsafe condition that has been created.

The photos that Mr. McLaughlin presented are of a 4'x3' proposed sign, at a 57" height which brings it above the mailboxes so that one can see the sign as you come along. Also presented were photos of signs of various sizes and a mock cardboard color rendition of the sign that is being proposed. Chairman Roeller remarked that the bottom of the sign is about 4'6" above grade.

Chairman Roeller expressed that this application is a continuation of the October 16<sup>th</sup> public hearing; if anyone from the public in attendance has a comment or question, to raise their hand and be recognized.

Board member Parisi questioned if Mr. McLaughlin proposes a light on the sign? Mr. McLaughlin said the current sign is presently lite, he would like to continue having a lighted sign. Mrs. McLaughlin said that there is a timer on the light that is on for about five hours per day. Mr. McLaughlin said the glare of the light is reflected away from the street. The sign is not a neon sign it's a very small light with a timer.

Board member Parisi remarked about the shrub that is due east, not on McLaughlin property, and questioned if Mr. McLaughlin has approached his neighbor about the removing part of the shrub for more visibility? Mr. McLaughlin responded in the negative, said the diesel repair shop owner parks trucks in the driveway during the day. Board member Parisi said it appears when driving down Route 44, in that direction, the visibility is impaired by the shrub. Mr. McLaughlin said the visibility is mostly impaired by the mailboxes; if part of the shrub is trimmed back it would be beyond the sign and pointed out the bulk of the obstruction. Board member Parisi suggested setting the sign further back to have more visibility from further down the road.

Board member Parisi remarked that this home occupation is not a traditional home occupation, and questioned why Mr. McLaughlin doesn't apply for a retail business, then he could have the larger allowed sign? Board member Audia commented that this is part of the master plan update being reviewed for the next two years. The signage useage in the hamlet will be reviewed; this has always been at issue since the '89 zoning change. Chairman Roeller said that home occupation signs are always restricted, are not intended to support a retail business that Mr. McLaughlin has. Home occupation signs cannot be illuminated, cannot have banners, can only be two square feet. The problem is that Mr. McLaughlin has a retail business, not a home

occupation, is legally listed as a home occupation. If Mr. McLaughlin were to petition the Town Board or Planning Board to approve this as a commercial use in the hamlet, they would be at issue with the existing formula, residential vs commercial; it would not be permitted until such time that there is more residential development in the hamlet, or allowing more commercial development.

Mrs. McLaughlin commented that whether this is a home occupation or a retail use, if there are two persons visiting, there is still a safety issue of persons turning around in the road. Chairman Roeller remarked that since this was brought up at the meeting last month, he consulted the town attorney about the Town's liability, who said that this is not an issue. If the home occupation ordinance created an unsafe situation, that is different. Holding the Town liable for an accident that would occur because someone was looking for the McLaughlin Store and came to a stop or created an unsafe condition would not create Town liability. Mrs. McLaughlin said she never meant to imply in any way that the Town could be held liable; they are not running a huge business at the Mabbettsville store. The business is being kept very low key, there is only one worker there at one time, and either her daughter or herself. Mrs. McLaughlin said that she would feel horrible if someone gets hurt. Mr. McLaughlin remarked that the previous business was an antique store which was not listed as a home business, when he applied for the special permit to use the business as a retail clothing store he was told since it was an antique store it would be allowed and remain as a home business.

Fletcher Coddington, Arrowsmith, Route 44, adjoining neighbor, addressed the board, said he has been in business in Mabbettsville for twelve years. He has seen people drive by his sign, which is much more visible than Mr. McLaughlin's sign, "they just jam on the brakes, throw the car in reverse, and back down Route 44." There have been two accidents in his driveway because people were looking for his business. Mr. Coddington feels that in the interest of safety, it makes sense to him to allow the applicant to have a larger sign. The Mabbettsville formula is exceptionally exclusive, doesn't have the big box store look to it, is selling high quality millinery goods. Mr. McLaughlin occupies his home, is selling out of his home, and he feels this is a home business.

Board member Audia said that he doesn't see a 911 number address. Mr. McLaughlin said it is placed in the front of the house. Board member Audia expressed that everyone today uses some type of navigation system, Google, looks for a number; Mr. McLaughlin may want to consider placing the 911 number address on the store location. Mrs. McLaughlin said the 911 number address is shown on the mailbox. Board member Audia said that the mailbox doesn't relate to the sign, perhaps the 911 number address can be placed on the post. Mr. McLaughlin expressed that regardless where the 911 number address is, it cannot be seen, persons are not going to make contact to the signpost in time to make an adjustment to drive into the driveway. Board member Audia expressed that one can look at mailboxes, but unfortunately, it is not as direct a correlation as looking for a sign.

Repair? Mr. McLaughlin said that he has not taken dimensions of those signs.

Review of the mock cardboard color signs being proposed, and photos of various sign sizes presented followed.

**A motion to close the McLaughlin public hearing was made by board member Parisi, and seconded by board member Baker. All ayes.**

Chairman Roeller expressed that he has done a considerable amount of thinking since the last meeting; at one point feels that the law is the law, technically this is a home occupation, is willing to grant as much relief as allowed by the law, but that doesn't even begin to address Mr. McLaughlin's needs. Then, feels practical, at some point in time this will be addressed in Mabbettsville, and hopefully resolve some of these issues, will be a bonafide retail operation, the sign will be conforming, the business will be rewarded by the larger sign. He has come to the conclusion that common sense and realism make a strong case for grating relief because of the circumstances that this was approved as a home occupation.

Chairman Roeller referred to the two models of a proposed sign that were submitted, one smaller, one larger, the same height. The small sign - 1'4" x 3'8" (4 sq. ft), the large sign - 3'3.8" or 10 sq. ft. to be above mailbox level.

Board member Parisi suggested placing a condition on the variance if granted, if the property changes hands, the variance would be cancelled, also, placement of the sign is subject to review by Zoning Administration, Jack Newbauer.

Board member Baker expressed that he checked to see if there are any height restrictions in placing the sign above the mailboxes. He would consider voting for a 4 sq. ft. sign.

Board members considered granting the variance to go with the current use of the property and to be re-addressed with either change of ownership or change of use, subject to review by Zoning Administrator Jack Newbauer for placement of the sign.

**A motion to grant the McLaughlin application a variance from Article III, Section 331.(3), signs, for the current use and/or ownership of the business, placement of the sign, and sign size of 1'4"x3'8" or 4 sq. ft. subject to approval by Zoning Administrator, Jack Newbauer was made by Chairman Roeller, and seconded by board member Parisi. 4 ayes, 1 nay.**

Fee Status: \$150.00 application fee paid

The application of Matthew Pfisterer and Lisa Lahey Pfisterer is for area variances from the Town Zoning Code Appendix B, Schedule of Area and Bulk Regulations, to allow continued use of the existing garage at 2444 Salt Point Turnpike, Clinton Corners, Town of Washington.

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**Dutchess County Tax Map Grid No.: 6566-02-618812 Town of Washington**

## 656600 Town of Clinton

Previously submitted to the board were completed Application to Board of Appeals, Short Form Environmental Assessment Form, and Map of Survey for Parcel A & B - Tatsch prepared by Oswald & Gillespie, dated August 5, 2003.

Matthew Pfisterer appeared before the board.

Chairman Roeller gave a brief review of the history on this application, said that the Pfisterers are in the process of applying for a special permit to convert an existing garage into an accessory residential structure for the care of their elderly relatives with the Planning Board. Due to several circumstances, variances are needed because the garage that was built in 1984 was approved, a C. of O. was issued by the Town of Clinton, Building Inspector, while the garage is located in the Town of Washington. The property is split by a town line. The pre 1989 zoning allowed accessory structures to be within ten feet of a property line. This led to many problems in the 80's and early 90's because a large number of horse barns, large structures, were being built close to property lines; the current zoning says that accessory structures of 600 sq. ft., or less, may be built within certain distances of the property line. The zoning board needs to grant relief from Section 355 of the current zoning.

Chairman Roeller expressed that this application is a Type II, or Unlisted Action, not subject to SEQRA review.

**A motion to open the Pfisterer public hearing was made by board member Audia, and seconded by board member Marshall. All ayes.**

Chairman Roeller stated that the board is to consider granting a variance from Section 355 Accessory Structures, to allow a greater than 600 sq. ft. existing structure for continued use. Chairman Roeller said that attorneys are rescinding one building permit, and re-issuing another building permit according to correspondence received from town planner, Neil Wilson and the Town of Clinton building inspector. Granting relief from Section 355 would allow a greater than 600 sq. ft. existing structure to continue its use. Once a variance has been granted the planning board will resume their review for a special permit application. Chairman Roeller said that a building permit was never issued by the Town of Washington, under the current zoning standards an area variance is needed because the structure is greater than 600 sq. ft.

Board member Parisi questioned the size of the lot and the current zoning? Mr. Pfisterer said 1.24 acres in the Town of Clinton, .64 acres in the Town of Washington. The current zoning in the Town of Clinton is unknown. Chairman Roeller said that the existing structure was approved, given a building permit and C. of O. by the Town of Clinton when it was constructed. Mr. Pfisterer said it is in the hamlet, a business was being conducted out of the garage by the previous owner.

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Board member Parisi questioned, when the property was purchased, was the configuration one or two lots? Mr. Pfisterer said the property was two lots, one in the Town of Clinton, one in the

Town of Washington. The previous owner combined the two lots. Board member Parisi questioned if ownership of both lots is on the deed? Yes. Board member Parisi questioned, if the lots are nonconforming did they get merged? Chairman Roeller remarked that this issue is a mute point because it has been pre-existing; the issue is about the use of the structure. Chairman Roeller feels because the garage is in the Town of Washington, the house is in the Town of Clinton, that the Town of Washington Standards would apply.

Since no one appeared from the public to comment on this application the public hearing is closed.

Chairman Roeller said the applicant is requesting 48 ft. side yard and 33 ft rear yard relief from setback requirements.

**A motion to grant the Pfisterer application 48 ft. side yard and 33 ft. rear yard from setback requirements based upon the Town of Washington Standards in a 5 acre zone, was made by board member Audia, and seconded by board member Baker. 4 ayes, 1 abstain.**

Fee Status: \$150.00 application fee due

Previously submitted to the board for the Joseph E. Iannucci application were completed Application to Board of Appeals, Short Environmental Assessment Form, 8 ½ x 11" xerox copy of survey map prepared for Gail S. Thorp, by Harry J. Bly, L.S., dated November 9, 1990, and full scale elevations drawing of the Iannucci one family residence.

**Dutchess County Tax Map Grid No.: 6764-01-270545**

Joseph E. Iannucci appeared before the board.

Chairman Roeller expressed that this is a Type II Action not subject to SEQRA review and gave the history on this application for board members. A building permit to construct a second story addition to the house was improperly issued by building inspector, Jim Tyger, who thought because the footprint of the house was not being increased, going up in the same footprint, that variances for this nonconforming lot would not be needed. However, upon viewing the zoning code, the footprint is not looked at as much as the gross aggregate area, that has a 25% threshold. Mr. Iannucci proceeded with construction upon receiving the building permit and wants to "close the book for a Certificate of Occupancy."

Chairman Roeller said he met with Jim Tyger, Jack Newbauer, and Town Attorney Gifford; the decision was made to bring this issue before the ZBA to hear public comment, and also to

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review, possibly grant a variance with or without conditions.

This is a small nonconforming lot in the zone, the lot coverage is already maximized. If Mr.

Iannucci wanted to add another addition, or put an accessory structure on the property, he would need to obtain a variance.

Chairman Roeller read the letter drafted to Mr. Iannucci by Jack Newbauer and Jim Tyger because of neighborhood concern. The letter is dated September 4th. "Mr. Iannucci, we are writing pursuant to a recent building permit you received for your property, 23 Maple Hill Drive, please know that with the issuance of the permit the structure of the above referenced parcel has reached maximum lot coverage allowed under the Town of Washington Zoning Law. You will not be able to increase the footprint of the existing structure without required variances. Also, please know that inasmuch as your property is undersized and considered pre-existing, nonconforming, it may not be converted into a two family house without required variances."

**A motion to open the Iannucci public hearing was made by board member Parisi, and seconded by board member Marshall. All ayes.**

Michael Iannello, 27 Maple Hill Drive, adjoining neighbor, spoke in support of the variance grant application. Said, the house is absolutely beautiful, he does not have any problem with granting the variance.

Daniel O'Connor, 75 Maple Hill Drive, addressed the board to say that most of the Maple Hill Drive residents have made major improvements to their homes, have beautified the area. Joe Iannucci has gone "leaps and bounds over everyone else in the neighborhood, the house is perfect to view. Mr. O'Connor questioned if there is some responsibility on the part of the building inspector knowing that he made an error in issuing the building permit, and not researching the proper codes prior to issuing the building permit? Has any Town representative reviewed this? Chairman Roeller said that this application has opened up a good dialogue between the zoning administrator and building inspector, planning and zoning boards. Discussions and future meetings will be set up on these types of issues. Many towns use the criteria, if you do not increase the footprint, you do not need a variance. The intent of zoning, and the administration of the zoning by Jack and Jim, will have a much better working relationship with different segments of the town government.

Board member Baker expressed that a significant part of the confusion comes from the difference between the Village and the Town. Enforcement personnel have worked for both, sometimes simultaneously. The error was using the Village Code in evaluation over the Town Code.

Michel Murphy, Town Board Councilman addressed the board, expressed that when the situation occurred, it was brought before members of the Town Board for discussion, was communicated to chairman Roeller, and other jurisdictional individuals of the town. As chairman Roeller has stated, the dialogue has carried over in town board discussions; this is one of the reasons that he sits in on these meetings.

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Howard Schumann, Maple Hill Drive, spoke to the positive and negatives of this application, said that the Iannucci house is nice looking, but his concern is what happens in the future if someone else buys this house, or there is some change in the use of the house. As the house

existed prior to the addition, under normal procedures it would have only been suitable for a single family house. Some conditions or restraints should be considered so that in the future if someone comes along with a much larger house than normally existed, hopes that the board will find placing a restraint on the house that it remain for its original use, which was for a single family residence even as a nonconforming house. Rather than saying that the application is for a variance for a change, he feels that a condition on granting such an extreme change in an area which is more than doubling that what would be allowed should be considered. In exchange for granting relief on this application, he would like to see the planning board protect neighborhoods, persons, for future changes. He requests that the board consider that this house remain in its original use as a single family use. It is also a change in the general character of the neighborhood because most of the houses are on different size lots, are conforming in proportion to their lots; this change brings this house way out of proportion to Mr. Iannucci's lot size even though some of the houses are on small lots, they are small houses. Mr. Iannucci was fortunate that he was able to build such a nice house, but Mr. Schumann is asking the board to consider placing a condition on this application for the future.

Mr. Iannucci clarified that there is no intent to make his house into a two family dwelling. He understands what is being addressed is the expansion of the footprint of the property, that the footprint does not take into account the height of the property or the size, but, the lateral expansion of the property, is really what this zoning references. Chairman Roeller responded in the negative, said that the board uses gross aggregate square footage for nonconformity for structures, buildings. Relief from that is the 25% rule, meaning that if conditions, site conditions, are favorable, neighborhood concerns, and other issues, the board has the ability to grant a 25% increase of the gross aggregate square footage that is existing.

Mr. O'Connor said that Maple Hill Drive was all building lots when first developed, some lots are smaller than others, however they are ruled by one acre zoning laws today. Mr. Schumann is saying that to put a restriction on the property, that restriction already exists based on the current zoning. Chairman Roeller expressed that the board, in granting variances, because variances go with the property, has to disassociate applicants from the future owners. Chairman Roeller sought the attorney's and consultant's take on this application and got their blessing that if the board favored granting the defacto variance that would be needed from the expansion of a non-conforming building; it would be acceptable to place conditions, restricting the residence, limiting it to a single family unit that could be placed in the Certificate of Occupancy.

Roderick W. Ciferri, III (Skip), said he owns the land in the back of Mr. Iannucci's property. Mr. Iannucci has done a good job with his addition he feels that the board should go ahead to grant the variance. Said that there is village water and sewer available although at present it is not being offered. All of the Maple Hill area has village water and sewer available, this was one of the reasons the sewer line was built, not only for his use, but for the very small lots that were there, most of the lots are .25 acres. Board member Baker remarked that this is one of the reasons for placing a restriction on this application, should village sewer and water be brought in,

the density could increase, it would be harder to restrict the use. This would make it more

attractive to someone who wanted to use the residence as a two family unit.

**A motion to close the Iannucci public hearing was made by board member Baker, and seconded by board member Parisi. All ayes.**

**A motion for relief from Section 391.7 for nonconforming uses, for the expansion of a nonconforming building be granted, with the condition attached to the Certificate of Occupancy, that the use of the residence be restricted to only a single family residential use, was made by chairman Roeller, and seconded by board member Parisi. All ayes.**

Fee Status: \$150.00 application fee paid

The application request of SJW Development LLC, (Schuyler Woods) is for area variances from the Town Zoning Code Appendix B, Schedule of Area and Bulk Regulations to allow the construction of a three car garage at 86 Stanford Road. The property is zoned RM 2.

Schuyler Woods, owner, and Mark Graminski, P.E. & L.S., 13 Elm Street, Red Hook, NY appeared before the board.

Chairman Roeller stated that this application is a Type II Action not subject to SEQRA review, next questioned Mr. Woods if he lives at that property, if the house is occupied. Mr. Woods said that he does not reside there, he has an office there for his business.

Mr. Graminski explained that the site is located on the north side of Stanford Road, the current zoning is RM 2. The total parcel size is 0.71 acres or 31,005 sq. ft. The lot is a sub-standard lot regarding lot area. Mr. Graminski said he included bulk regulations on the site data. Chairman Roeller questioned if the lot width and road frontage conform? Mr. Graminski said the lot width and road frontage do conform, both 200 ft.

Presently there are two structures on the property as shown on the plan, on the north side of the property. A storage tank is on the property on the northwesterly corner. Mr. Graminski listed the approximate square footage for both structures. The application is for the construction of a three car garage. Mr. Graminski said the dimensions of the proposed garage are not on the plan; the size is 30'x40', the footprint is 1,200 sq. ft.

Placement of the garage as shown on the plan requires relief from three (3) variances from bulk regulations; the front yard requirement is 75ft, applicant has 26ft & 29 ft., the side yard requirement is 50 ft., applicant has 10ft., the rear yard northeasterly corner requirement is 50 ft., applicant has 48 ft., needs 2 ft. relief.

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Chairman Roeller remarked that the applicant may need relief from Section 355 sentence two, in addition to the required yard setbacks. There is language in the code that says, "if an accessory structure of 600 sq. ft. is not attached to the principal structure by nonconforming lots

of 1 acre or less, it may be located in a distance not less than 50% of the distance required by appendix B of the zoning code from the side and rear, provided that it is not located any closer to the road's bordering the property than the principal structure." (this is in the front yard, in front of the principal structure.) Chairman Roeller expressed that there is no conceivable way that anything can be sited in the rear yard, immediately behind the house, is at a tremendous elevation to Rodrigo Knolls.

Chairman Roeller questioned the type of construction that is anticipated. Mr. Woods said the proposed construction is a Pole Barn. Chairman Roeller remarked that Mr. Woods could construct in that area. Mr. Woods said by the time you place a silt pad, you are raising the grade, and changing the whole landscaping of that entire area by the time it is brought in. Chairman Roeller remarked that he noticed that subsurface drainage has been put in; Mr. Woods said it doesn't keep up. Chairman Roeller said seasonal ground water level is close to the surface during much of the year, but with a stone pad, and the type of pole barn construction..... Mr. Woods said in that area he would still need most of the variances that are being applied for. Chairman Roeller said that the pole barn could be sited more conforming to the intent of the Code, which is basically getting it out of the front yard, much less relief would be needed from the current zoning standards. Board member Marshall questioned where the wet area starts? Mr. Woods said there is a catch basin, perforated pipe, that goes through that area. When someone from Rodrigo Knolls drains their swimming pool this all floods. Board member Marshall questioned to where does the drain go? Explanation given by Mr. Woods, said there are laterals that dump into a catch basin, then go underneath Stanford Road. It would take thousands of dollars to make that happen; there is a big Maple Tree that he is trying to preserve, he could move the pole barn forward from ten feet, could cut down the Maple tree, move it ahead twenty feet, but he would rather not take down the Maple tree.

Board member Baker questioned Mr. Woods if he was using the house as an office? Mr. Woods responded affirmatively, said he has owned the property for five years, his office has been there. Board member Baker questioned the use of the proposed garage. Mr. Woods said the garage would be used for storage, to store his jeeps, snow plow.

Chairman Roeller said he visited the site, walked around a little, and saw that someone had put up stakes and made reference that Mr. Woods is pleading hardship by site conditions, subsurface water, steep banks, slopes, and feels that the placement of the proposed garage is the best location for those reasons.

Mr. Graminski said that part of the application that was made with Mr. Woods provided a copy of the survey that was done by Chase that shows the encroachment of the structure over the property line that is a 1.3ft encroachment over the property line.

**A motion to open the Woods public hearing was made by board member Parisi, and seconded by board member Baker. All ayes.**

Katherine and Warren McMillan, 23 Rodrigo Court, adjoining neighbors, are concerned because there is already an encroachment there. The Woods house is on their property, they feel the encroachment issue should be resolved first before a structure is added. Chairman Roeller said when the transaction was being made to purchase the house, the encroachment was known, and questioned if there was any attempt to purchase? Mr. Woods said during the title search, everything went through for the mortgage to purchase the property. Mr. McMillan remarked that financial institutions are not required to do a title search, the deed still has the encroachment on it. The Bank of Millbrook provides loans, doesn't care if there is an encroachment; the problem is between the two land owners. Mr. McMillan said they were not aware of the encroachment until attorney Bruce Aubin contacted them about the encroachment a couple of years ago. Mr. McMillan said three or four surveys were done on Rodrigo Knolls, the only time the encroachment came up was when they finally surveyed an old piece of subdivision property. They had no knowledge that their property was on that line. Mr. McMillan said that they did not want to make this more complicated, but if they try to sell their property, this becomes an issue.

Chairman Roeller expressed that even though the Woods and McMillans are abutters, there is still a substantial distance, vegetation and grade between the two places. In his opinion, about the impact on the McMillan property, is that the garage will not be seen unless the McMillans walk to the edge of the property, look down the hill through the trees and say there it is. Noise, nuisance, lighting, etc. are not really an issue. Mr. Spagnola is ten foot from the Woods property and would be much more potentially impacted by the granting of a variance and the consequence of the construction of the garage. Chairman Roeller feels that this issue is between home owners, and assumes that for many reasons it could be resolved by purchasing a piece of the corner of the property that would put the house on the Woods property.

Mrs. McMillan questioned where the setback is from the rear line, where it will be in relationship to the house that they have on the back line? Mr. McMillan said the opening is 1.132 and questioned if this is all they have to work with? Board member Baker remarked about the creation of a nonconformity. Board member Audia said Mr. Woods would have to buy enough land to make it conforming. Chairman Roeller said to at least buy enough land to put the structure on his property.

Mr. McMillan said this encroachment creates a problem if they ever wanted to sell the property. No one would be able to buy the property because of the title search. Mr. Woods said he purchased the property from Lou Spagnola.

Mr. Graminski said in order to get a portion of the building on, even with clearance, it would be 11 square feet which would be .0002 acres. In this case, this would be a separate application; this issue could be satisfied with a lot line alteration which is a planning board issue. In doing that, the structure is already nonconforming in the setback. By doing a lot line alteration it would

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lessen the nonconformity of the setback.

Chairman Roeller remarked that this is not an issue before the zoning board; this should be

resolved through a lot line adjustment that would make the McMillan lot less nonconforming, when the property is conveyed that is needed, make the Woods lot conforming. If not, Mr. Woods would need to re-appear before the zoning board, saying there is a lot line adjustment before the planning board, now need relief from the rear yard. Mr. Graminski expressed that it would be a simultaneous application with the planning board and the zoning board if deemed necessary.

Mr. Woods expressed that he is willing to do something about the encroachment. Mrs. McMillan questioned where the proposed structure is going to be in relation to the back lot? Mr. and Mrs. McMillan were invited to view the site plan map, and were given a review of the map, existing structures, and the proposed pole barn. Chairman Roeller said that part of the board's job is to see if they can minimize the amount of relief needed. Mrs. McMillan said the board is suggesting that Mr. Woods move the garage back; the closer Mr. Woods moves the proposed pole barn back, the closer it is to the McMillan property. Board members said that the bigger problem is the side yard. Mr. Graminski said that Mr. Woods could eliminate the request for one of the variances by moving the pole barn so that it is fifty feet or in excess of fifty feet from the rear yard. This would increase the front a little.

Board member Baker suggested taking one bay out of the pole barn. Mr. Woods said that he needs the depth, he has a truck with plow, jeeps, also some equipment that is outside now, that is to be placed in the proposed pole barn.

It is noted for the record that adjoining neighbor Lou Spagnola, who would be impacted the most by this application, is not in attendance and was sent a copy of the public notice.

Board member Parisi remarked that this is a nonconforming lot, Mr. Woods is adding almost 75 sq. ft. and questioned if he needs relief from the amount of increase in the size? Mr. Graminski said that 10% coverage is allowed, Mr. Woods is at 8%, 3,100 sq. ft coverage is allowed, this application is 2,800 sq. ft.

Board member Baker questioned the tone of the whole area? Chairman Roeller said the area is a mixed bag. The Woods property is very much constrained by factors such as drainage, slopes, etc.; the proposed location is absolutely the best for the pole barn for many reasons. Lou Spagnola already has many buildings, commercial field; this one additional building is not going to have a lot of impact on the neighborhood, district, in general. Site conditions come into play, moving the pole barn more towards the front of the house, even though relieving the side yard, from a design and architectural standpoint; the only issue is the size of the pole barn for a three car garage, "lets talk three car or two car, and square footage." Mr. Graminski stated that he did the math, the aggregate square footage for the lot coverage is about 8%.

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Board member Baker expressed that the intended use in this area is residential; this application is very much turning it into a commercial use. There is a house on the property that is not being used as a house in terms of a residence. A large garage is being put up for storing a number of vehicles, not a car or two, a lawn mower that goes with persons living in a house. Board

member Baker questions if a commercial operation is being created? Chairman Roeller referred to the Spagnola property being used for both his business office and base of operation for his plumbing and heating business, there is also a rental unit above the shop. The remainder of the neighborhood is residential. The Spagnola property looks like a commercial site.

Board member Marshall questioned Mr. Woods if he plans on living in the house; response was negative.

Board member Baker said that the Woods property is not being used as residential property, is being used as commercial office space. The area is zoned residential, and is gradually sliding more and more into commercial use without any specific recognition of that.

Chairman Roeller said the board could stipulate that the use of the structure be associated with a non commercial use, meaning that Mr. Woods is to store his four wheelers, truck and plow, for residential storage. Board member Baker questioned what the tent on the property is being used? Mr. Woods said a lawn mower, a vehicle. Board member Baker questioned if Mr. Woods plans to take down the tent? Mr. Woods said he does not intend to take down the tent. Chairman Roeller questioned if the tent is on a foundation or pad; it was determined that the tent is not fastened. The size of the pole barn is 30ft deep, 40 ft wide, is a single story, three bay, split up into ten foot sections; the square footage of the house is 1,350 square feet, the garage is almost equal to the square footage of the house. Mr. Woods said that he has a 8'6' plow in front of his truck. The height of the pole barn is 10ft x 10ft.

A brief review of the elevation drawings presented followed. Mr. Graminski remarked that the use of the building is a private garage for the storage of vehicles. Board member Parisi said the proposed garage is not storage for residential use.

Board member Audia remarked that restrictions can be placed on the application.

**A motion to close the Woods public hearing was made by board member Parisi, and seconded by board member Baker. All ayes.**

**A motion to grant a 49ft relief from front yard, 40 ft. relief from side yard, 2 ft. relief from rear yard from bulk requirements, also relief from opening paragraph Section 355 accessory structures, sentence #2, that the accessory structure not be placed closer than the front yard setback for the principal structure of the district, in addition to the needed reliefs and intent of front yard setback, the approval is conditioned that the use of the proposed garage be strictly residential in nature to support vehicle storage, equipment storage, and is not to be used for noncommercial residential uses in a residential district, was made by Chairman Roeller, and seconded by board member Marshall. 4 ayes, 1 abstain.**

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A motion to adjourn the meeting was made by board member Parisi, and seconded by board member Baker. All ayes.

Respectfully submitted,

Nikki Caul, secretary