

Town of Washington  
Zoning board of Appeals

March 17, 2009

A meeting and continued public hearing of the Zoning Board of Appeals was held on March 17, 2009. at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York to consider the applications of 1) TD Rentals, Inc. for an appeal from the Cease and Desist Order and interpretation of the Zoning Ordinance, Section 310 (1) for use of the property for private non-commercial recreational uses. The property is located at 1492 Route 44 in the RL 5 Zoning District 2) Matthew Pfisterer and Lisa Lahey for a determination of the circumstances of the Zoning Ordinance Section 334.1 Emergency Housing, Temporary Housing, Field Offices, and Storage, and area variances to utilize the existing foundation (after garage removal) to support a mobile home for their parents. The property is located at 2444 Salt Point Turnpike, Clinton Corners, Town of Washington, in the RL 5 District 3) George Oppenheimer for an interpretation of the Zoning Ordinance Section 321.3 List of Home Occupations a. (20) Tutoring; for use of the property for dance instruction to teach dancing inside the existing single-family house for various forms of dance. The property is located at 350 South Road in the RL 5 District.

Members Present: Chairman, Brad Roeller, Peter Audia, Jerry Baker, Donald Marshall, John Parisi.

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

**A motion to approve the February 17, 2009 meeting minutes as written/submitted was made by board member Parisi, and seconded by board member Baker. All ayes.**

Chairman, Roeller announced a change in the order of the agenda. The Pfisterer-Lahey application will be heard first since the T.D. Rentals, Inc. applicant is not yet present; attorney Pamela Richardson is present for the continued public hearing, this application will be heard second. The application of George Oppenheimer will not be heard.

Matthew Pfisterer and Lisa Lahey appeared before the board.

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

Chairman, Roeller read the published public notice, said, in addition for a determination of the circumstances of the Zoning Ordinance Section 334.1 and area variances, consideration to grant a Special Permit will also be heard by the board. Chairman, Roeller explained that normally zoning board's don't grant special permits however, in a few cases of the zoning, this being one of them, the zoning board does the review and grants the special permit. The planning board will not be involved in this application.

According to the SEQRA process, the zoning board will need to declare itself as Lead Agency.

**A motion to declare the Town of Washington Zoning Board of Appeals Lead Agency, and declare the application a Type II Action under Section 617.5 sentence 13 and 33, was made by chairman, Roeller and seconded by board member Baker. All ayes. Referrals have been made to the County per Municipal Law by consultant, Neil Wilson.** Chairman, Roeller said the board is not able to approve the special permit until word/comment is received by the County.

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

Gary Davis, adjoining neighbor, addressed the board, said he doesn't know the application process, received the public notice, wants to gain a better understanding of the location, type, of structure.

Chairman, Roeller expressed that he would like the board to make a site visit to the property, said, at tonight's meeting the determination can be made that the application warrants a determination of the circumstances of the Zoning Ordinance Section 334.1. The zoning board does not normally get into site planning issues.

Mr. Davis was invited to review the survey map with the board and applicants. Lisa Lahey remarked that the structure is already there, is a three (3) car garage; their first consideration was to renovate the building into a cottage. The garage will be torn down, the foundation will be used. Mr. Pfisterer said the structures sizes are roughly the same, one will be a modular unit, the other is a garage.

Board member Audia remarked that this is a temporary structure which will eventually be removed. Chairman, Roeller said the Code reads that periodically the applicant needs to appear before the board to renew the permit. During the site visit, the board can actually pin-point the location, measure to the property line to get the actual distances for needed variances relief.

Ms. Lahey said that they are going to look at mobile home models on Saturday, was told that mobile home dimensions 40'x36' are not actually that size, may be 40'x52'.

Chairman, Roeller expressed that the board cannot grant special permit approval tonight but can make a determination of circumstances of the Zoning Ordinance Section 334.1 to warrant the Emergency Housing.

Board member Baker questioned about the water and septic system? Ms. Lahey said that they have an engineer that has already been to the site to start testing. When they appeared before the planning board for a special permit to renovate the structure, they started the process with the Board of Health for approval. The tests that have been conducted by the engineer are very positive. The process was then stopped, they now have to re-evaluate the circumstances for the proposed mobile home. Ms. Lahey expressed that they will probably put in an additional well

Page 2

and a septic system for a one bedroom model home.

Chairman, Roeller referred to the survey map showing a dividing line between two lots; it appears that a lot line adjustment was anticipated. The board needs clarity in making sure that a lot line adjustment was never executed and filed as a subdivision. Ms. Lahey said she contacted the surveyor regarding the division line between the two lots that are shown on the survey map. The surveyor claimed that the attorney wanted that line shown on the survey map and referred her to the attorney. The attorney said that they do not keep any records after a certain length of time and are destroyed. Ms. Lahey said she telephoned the County, spoke to the on staff Washington Township Mapper who said according to their records that line doesn't exist. The map was brought to them in 1980 or early 1990's to have those two parcels merged into one parcel by the previous owner. When Ms. Lahey's family requested to have a survey done, the surveyor was given the old survey. The dividing line should not have been drawn on the survey map. The County records it as one lot that was merged by the previous owner. Mr. Pfisterer explained that they receive two tax bills, they pay for two tax parcels one for the Town of Washington and one for the Town of Clinton. Ms. Lahey submitted a letter dated March 1, 2009 from the Town of Washington Assessor's Office relative to the property assessment and is on file.

Chairman, Roeller expressed that the board will make a Determination of the Circumstances of the Zoning Ordinance Section 334.1 tonight; consideration to grant a special permit will be made at the April 21<sup>st</sup>, 2009 meeting after a site visit is conducted by the board.

Board member Audia questioned if the structure will be torn down, moved, replaced? Mr. Pfisterer expressed that he telephoned the Morton Company; the garage is a 1985 Morton built garage, is metal with a wood exterior that has no value. The garage is not feasible to be converted to a sound structure.

**A motion of agreement that the Circumstances of the Zoning Ordinance Section 334.1 exists, that the applicant has the right to pursue the Emergency Housing provision of the zoning, was made by Chairman, Roeller and seconded by board member Audia. All ayes.**

Chairman, Roeller said that the board will proceed with consideration to grant a special permit on this application. By the time of the April meeting the time span that the County needs to respond will have been met, the board can keep the public hearing open until that meeting, close the public hearing at the April meeting, by then, all specific information on the area variances will be in hand for the board to act upon. Board member Baker questioned if the County has a thirty day time frame? Chairman, Roeller responded affirmatively, said if there is no response, indicates that they have no problem with the application.

Chairman, Roeller expressed that the board will meet at the site, take some measurements, will walk the site, see the view shed, talk about lighting, parking, site issues. The board will wait for the April meeting to approve the needed area variances and take a vote on granting the special permit.

Page 3

Board member Baker remarked that the board should have a drawing of the proposed well and septic system since this application will not be directed to the planning board for site plan

approval; this board will be approving the site plan issues. Additional information was requested by the board, a drawing of the proposed well and septic system and a brochure of the proposed mobile home. Ms. Lahey questioned if she needs to get their engineer back on the project? Chairman, Roeller responded affirmatively, said the engineer knows the standards, etc. but the Board of Health will be the ultimate decision maker if the soils can accept the filtration rate, if the well can deliver the appropriate water amount. This board will be looking to see if the septic field will be interfering with anything, neighboring wells, etc. but will defer to the engineer and the Board of Health. Ms. Lahey expressed that their engineer has already determined the location of the neighboring wells. Chairman, Roeller said the board needs the engineer's drawing showing the septic system and potential well or hook up to an existing well. Also, a manufacturers picture/brochure of the mobile home with the dimensions so the board can have this as part of the record.

Board member Audia questioned if the boundaries are marked? Mr. Pfisterer said that there is a line of trees on one of the boundaries, a stone wall, they are easily recognizable.

Board member Baker questioned if this mobile home is considered to be temporary? Chairman, Roeller responded affirmatively. Board member Baker expressed that the engineer may not need a plan on the reserve of the septic, this is not like a house that is permanent, and the concern for fifty years. Chairman, Roeller expressed that the applicants are obligated to remove the mobile home after a specified amount of time.

Chairman, Roeller announced that the board is to conduct a site visit before the April 21<sup>st</sup> meeting. The site visit will take place on Tuesday, April 14, 2009 at 6:00 P.M.

Ms. Lahey questioned about temporary, how is the length of time determined? Chairman, Roeller read from the Zoning that "any such temporary housing shall be removed within three months of the date when the conditions upon the permit was issued cease to exist. Also, special permits for emergency housing shall be temporary and shall expire at the end of the calendar year following the date of issuance. Applicants may apply for renewal annually."

Chairman, Roeller expressed that the engineer should take the property line that is in error off of the survey drawing which will be used to submit to the County, this board can then utilize a copy for the submitted site plan in granting the special permit.

The Pfisterer-Lahey public hearing is adjourned to April 21, 2009. Mr. Davis questioned about public attendance? Chairman, Roeller expressed that this is a public meeting, the public is invited to attend the site visit.

Fee Status: \$150.00 application fee paid

Page 4

The application of T.D. Rentals, Inc. is for an appeal from the Cease and Desist Order and interpretation of the Zoning Ordinance, Section 310 (1) for use of the property for private non-commercial recreational uses. The property is located at 3492 Route 44 in the RL 5 Zoning District.

Tom Daniele, and attorney, Pamela Richardson, Gellert & Klein, PC 75 Washington Street, Poughkeepsie, New York appeared before the board.

Chairman, Roeller stated that this is a continued public hearing, additional correspondence has been received, the February 5, 2009 letter from Mark Garnot was located and is on file, a letter dated March 13, 2009 requesting that the ZBA reject the proposal for said usage of this property was received from Marguerite A. Rotunno and is on file. Chairman, Roeller presented Mr. Daniele with a copy of Zoning Administrator, Jack Neubauer's March 17, 2009 letter, said, that the letter is nothing more than a summary of his involvement with the property. The board asked him for his involvement so he summarized the visits he had and what transpired, has nothing to do with the Cease and Desist Order other than to say that it was issued.

Chairman, Roeller commented that the public hearing has been open for three months, questioned if there are any additional public comments or letters of submission? Chairman, Roeller expressed that he has attorney Richardson's letter dated March 13, 2009 that was circulated before the meeting, copies were made by secretary, Caul and distributed to each board member giving them a chance to read the letter before the meeting, questioned attorney Richardson if she wishes to speak to the letter? Ms. Richardson said only if any board member has any questions about the letter. Attorney, Richardson presented two letters in support of the track from Jim Outwater and Northeast Travel Connections- Brenda Daniele, both letters state that they ride on their own local property. The letters are on file.

Chairman, Roeller referred to attorney Richardson's March 13<sup>th</sup> letter regarding the modification or conditioning of the Cease and Desist Order; he is in agreement of that aspect, that it is not within the board's purview to condition or modify the Cease and Desist Order. Much similar advice has been given to the board by Town council, with the same message.

Tom Daniele addressed the Neubauer, March 17<sup>th</sup> letter, paragraph three, "I told Mr. Danielle that I would be issuing a Cease and Desist Order relative to any further soil removal." Mr. Daniele said he was never notified about the soil, never mentioned anything like that. The first time he heard about the Cease and Desist Order was when he received it in the mail. "Mr. Danielle indicated that he was planning on constructing a Motocross Track on the property." Mr. Daniele said he never told him this, there was only one there with the dirt track, said he never told him that he was going to construct a Motocross Track. Paragraph four, "Mr. Daniele asked, in sum and substance, whether a permit was necessary." Mr. Daniele said he never asked if a permit was necessary. Tom Daniele expressed that "Zoning Administrator, Neubauer's visit to the property was very nice, they never got into any in depth conversations."

Page 5

**A motion to close the T.D. Rentals, Inc. public hearing was made by board member Audia, and seconded by board member Baker. All ayes.**

Chairman, Roeller related that this board has been provided with a Draft Record of Findings, prepared by Town counsel. Questioned board members if any of the letters submitted tonight,

including attorney, Richardson's letter, would change their mind in the Record of Findings that was circulated? Board members individual responses were, "no" that the letters have not changed their minds. Chairman, Roeller said a Record of Findings was prepared based upon all of the submissions that the board received over the last two months. Also, a Resolution based upon making a decision by the board has been prepared.

Chairman, Roeller next read into the record, the Draft Record of Findings provided to the board, the final document is attached. Said, in the EVIDENCE, everything from the correspondence from attorney, Richardson, Tom Daniele's letters, submissions of previous zoning laws dating back to 1971, letters that the board heard during the public hearing, in all, twenty-four pieces of EVIDENCE are included. Chairman, Roeller addressed secretary, Caul relating that the letter from attorney, Richardson, received tonight, letters from Jim Outwater, Northeast Travel Connections-Brenda Daniele, and Marguerite A. Rotunno dated March 13, 2009 are to be added to the Record of Findings.

Chairman, Roeller said the board is modifying Zoning Administrator Neubauer's Cease and Desist Order basically saying that he had two points that the board is in agreement that is in violation of Section 310(1). Tom Daniele questioned chairman, Roeller if he leveled the Motocross Track could he still ride there? Chairman, Roeller responded negatively, said, "no, that is not a customary accessory or incidental use to the property." Attorney, Richardson said she is not sure that she agrees with that, information that was provided to the board..... Said, the letter that was submitted by David Daniele, says that he rides on his own property. The two additional letters that she submitted tonight speak to riding on additional properties in the area. There were several speakers at the public hearing who spoke and said that they ride on their own properties within the Town. That appears to be something that should be given greater consideration that this is a customary use of residential property in the Town of Washington. Tom Daniele, commented, if board members wish to come to see the property, no one called him. Chairman, Roeller expressed that the track is very visible from either Nine Partners Lane or Route 44, and the bounds are within sight. No one is disputing that the track is there or the uses of a Motocross Track. It is a question of making a finding, as Mr. Daniele's attorney argued, is a customary accessory use in the RL 5 zone.

Chairman, Roeller expressed that the board has had a chance to digest all of the testimony that has been offered, the board has sought counsel from Town attorneys on the interpretations of the cases that were cited in the arguments made by attorney Richardson, and have drafted this Record of Findings for a decision.

Page 6

Chairman, Roeller offered and read the Zoning Board of Appeals of the Town of Washington Resolution, March 17, 2009, Decision on the Appeal of T.D. Rentals Inc. **A motion to accept the Town of Washington Resolution March 17, 2009, Decision on the Appeal of T.D. Rentals, Inc. was made by Chairman, Roeller and seconded by board member Baker. The record of vote is as follows: Chairman, Roeller - aye, Peter Audia - aye, Jerry Baker - aye, Donald Marshall- aye, John Parisi - aye.**

David Daniele questioned, “what does that mean, exactly” Chairman, Roeller said that the board upheld Zoning Administrator Neubauer’s Cease and Desist Order and made a finding that this is not as argued, a customary accessory use. The board slightly modified his order because they found no bearing from the Planning Board Lot Line Adjustment. David Daniele next questioned what about the other people that ride on small acreage, himself included, will this be an issue? Chairman, Roeller remarked what triggered this cease and desist order was primarily complaints. There are many people using recreational vehicles, for recreation, shooting preserves, farmers using recreational vehicles to access their property, or persons just to enjoy riding through the woods. At this point in time, not unless there are complaints that trigger a determination, if this is customary? Tom Daniele commented, if he levels the jumps on his property it is okay to ride. David Daniele questioned if he invites a couple of persons to ride on his property, if there are complaints, they will lose that, then will be like a domino affect through the Town, America. Tom Daniele remarked that the other properties should be given a Cease and Desist Order too. Attorney, Richardson remarked that “similar properties should be treated similarly; the board has adopted the position that this is not a customary use in the Town.” Tom Daniele remarked that he has been riding for thirty-three years, if he keeps a couple of jumps, levels the rest, the board is saying that he can ride on the property. Chairman, Roeller said that Tom Daniele cannot conduct Motocross racing on the property. Mr. Daniele said he has never conducted Motocross racing on the property, the board cannot consider this Motocross racing, this is recreational riding. Said, if he levels the jumps, then rides on the track then this is different. Chairman, Roeller stated that this is racing. Mr. Daniele questioned, “what if I level the jumps?” Board member Marshall referred to the noise element triggering complaints. Mr. Daniele expressed that the noise has nothing to do with this issue. Chairman, Roeller said that the board made a determination that in the RL 5 Zone in the district that it includes, this is not a customary accessory use, nor is it an incidental to the primary use; the fact is that this is defacto to the primary use of the property. Board member Baker remarked it makes a difference if one lives on the property, that changes the residence on the property. Basically, the law says that the primary use is for a residence, at least occasionally, using a motorized vehicle for maintenance purposes is accepted.

Attorney, Richardson said “she is not sure that she is in agreement with the board’s attorney in the interpretation of that portion of the code.”

Tom Daniele reiterated that if he levels the jumps he can still can’t ride on the track. “The noise, dust, has nothing to do with the Zoning Board of Appeals.” Chairman, Roeller remarked that this is correct. Tom Daniele said that if he levels the jumps, then the Zoning Board of Appeals has no say. Chairman, Roeller emphasized that the board made a determination, and is in

Page 7

agreement; the board only had two choices, to either rescind the Order, or to uphold the Order. Based upon the evidence that the board heard, based upon the advice of the Town attorneys, reviewing legal cases and how they fit into this case, the board has made a determination that the Order should be modified but basically upheld. Tom Daniele questioned, what if he rides on the track, what will happen then? Chairman, Roeller said that he will probably get a visit from the Zoning Administrator, he would issue a warning, if that is violated, then the Town attorney would be able to tell Tom what the next step would be. David Daniele questioned if the Town

is going to build a track so that they can ride on it? Chairman, Roeller said he will have to ask the Town Board. Tom Daniele expressed that he considers this recreational riding. Chairman, Roeller remarked that this is his interpretation. Tom Daniele questioned if the board has ever been to a Motocross Track? Chairman, Roeller responded affirmatively. Tom Daniele said his track is nothing of the sort. Chairman, Roeller said, “he begs to differ.” It is not as big as a motorcycle but it has the same impact.

Attorney, Richardson requested a copy of the Record of Findings and Resolution. Chairman, Roeller expressed that the Draft Record of Findings has not been signed yet, will give her the current copy tonight. A final Record of Findings document and Resolution will be mailed to her by secretary, Caul.

Tom Daniele questioned if he is permitted to put a building or something on his property for his livelihood? Chairman, Roeller responded affirmatively. Tom Daniele next questioned, since he deals with construction is he able to put a commercial building there? Mr. Daniele was told that if wanted to develop that property into commercial use, the criteria for granting a use variance, he would have to show some economic hardship that he couldn’t get a reasonable rate of return by the permitted uses that are already on that lot. Board member Baker expressed that a home occupation would be permitted.

Tom Daniele said the complains were noise, had nothing to do with the Zoning Board of Appeals. Chairman, Roeller agreed, said, but it did prompt the ZBA to take a look at the use, and making that determination if it is a customary or incidental to a primary use of the property.

**A motion to adjourn the meeting was made by board member Parisi, and seconded by board member Baker.** The meeting was adjourned at 8:50 P.M.

Respectfully submitted,

Nikki Caul, secretary

