

# Cazenovia Zoning Board of Appeals

## Meeting Minutes

October 24, 2011

Members present: Chris Fischer, Chairman; Louis Orbach; Richard Sheridan; David Silverman; Gene Smith

Members absent:

Others present: Wendy Reese, Esq.; Ann Redfern; Richard Merrill; Phillip Cunningham; Tracie Cunningham; Daniel Hudson; Rhonda Youngs; Joseph Sutherland; Patricia Sutherland; Joanne Reynolds; Paul Parpard; Chad Tehan; Christian Danaher, Esq.

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C. Fischer called the meeting to order at 7:30 pm.  
The next regularly scheduled meeting is November 28, 2011.

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C. Fischer asked if there were any corrections or comments for the regular September 26, 2011 meeting minutes.

Motion by C. Fischer, seconded by D. Silverman to approve the September 26, 2011 meeting minutes as presented was carried unanimously.

C. Fischer asked if there were any corrections or comments for the October 6, 2011 special meeting minutes.

Motion by G. Smith, seconded by D. Sheridan to approve the October 6, 2011 special meeting minutes as presented was carried unanimously.

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C. Fischer informed the Board that Bond, Schoeneck & King is doing a training session Wednesday, 10/26/2011, 8:00 a.m.-10:00 a.m. at the Holiday Inn, Liverpool for anyone that needs continuing education.

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*Hazer, Penny & David - #11-770 – Use Variance – 5857 East Lake Road*

C. Fischer stated that the applicant asked that the file be adjourned for a month. He reminded the Board that they made an application to the County to become a member of an agricultural district. He further stated the process is still continuing and no decision has been made.

G. Smith stated he thought the end of October was the end of the period for new additions which means something may be known by the November meeting.

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*Wells, Steven & Martin - #11-784 – Area Variance – 5007 East Lake Road*

C. Fischer stated the applicant's attorney contacted the Board and asked that the file be adjourned a month. He further stated there is some additional surveying and other things they want to review to have a complete application for the November meeting.

C. Fischer reminded the Board that zoning requirements require a fence be set 1' back from the property line. He said the Wells started construction of a fence that is, arguably, on or 1" from the property line.

C. Fischer recommended that the Board stop by and take a look at the site. He further stated the Board could go as a group to visit the site which should be done in the near future.

C. Fischer said the file will be adjourned until the November meeting.

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At the end of the meeting, R. Youngs, stated she was unaware that the Wells' file had been adjourned for the month. She is the attorney for the Sutherland's, who are the Wells' neighbor. She stated the Sutherland's welcome the Board to come visit their property.

C. Fischer stated that last month the file was adjourned until tonight so he felt it made sense to proceed, if the Board agreed.

R. Youngs stated they appeared because they saw the public notice in the *Cazenovia Republican* that the file was scheduled for this evening.

C. Fischer displayed a survey to the Board which was submitted to the Town Office, October 12, 2011 which is dated 9/12/2011 and is the latest version, to Mrs. Young's knowledge.

C. Fischer stated the Wells started to construct a chain-link fence without a permit. They stopped construction. The posts have been installed but not the chain-link fencing.

R. Youngs stated there were 25 metal posts installed which sit in concrete and approx. 20' of the top rail was installed.

C. Fischer stated there is a variety of correspondence from the applicant's attorney and from Rhonda Youngs in the file. He displayed some photos which were shown to the Board.

R. Youngs stated the narrow strip of land is the Sutherland's property which is basically lake access.

R. Youngs said the Sutherland's property is lined by a hedge row on each side up to the front. The Wells have requested to put a black chain link fence from the lake all the way up to the end of the hedge row. She stated the application states it is a deer-tight fence. She stated that damage has already been done to the trees. She said when the posts were installed they trimmed significant portions of the trees, in areas up to 5'. She further stated the rails were installed on the Sutherland side of the property. She stated she thinks the trees are on the boundary line. She feels that some of the greenery marked on the survey arguably extends onto the Sutherland's property. She stated that is the case, especially, down closer to the lake.

R. Youngs stated they ask that the fence be set 1' back from the property line.

C. Fischer stated he thinks part of the issue is that the trees and the boundary line are not exact.

R. Youngs said the concrete bases extend approx. 11" out. She stated even with a 1" variance she feels disturbance would still be done to the Sutherland property.

J. Sutherland stated the Wells have cut off the posts and left the concrete in the ground.

C. Fischer stated he communicated with the applicant's attorney and it is the applicant's position that installing the fence 1' back would not be possible as that would put the fence in the middle of the hedgerow.

R. Youngs stated she reviewed the area variance criteria and she feels the application fails the criteria. She stated it is a detriment to the Sutherland property.

C. Fischer stated he does not think the survey is incorrect but it is hard to tell the exact location of things, in this kind of dispute. He stated he would like to know if the trees are on the Wells' property, the Sutherland's property or on the property line, itself.

The Board reviewed the survey to see the details regarding the iron post survey markers.

R. Youngs stated a string line cannot be run connecting the two points because the trees are in the way.

G. Smith stated that D. Vredenburg could put several marker posts on the line with his equipment.

C. Fischer stated the applicant's attorney raised the argument of the zoning ordinance of 1' off the property line could create a title problem because essentially it is giving land to the adjoining land owner.

R. Youngs stated the Sutherland's want the trees to stay there and not get damaged any further. She further stated the fence does not enclose any area it just goes up along the trees.

C. Fischer reviewed the area variance criteria for the Board as follows:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property will be created by the granting of the new variance.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
3. Whether the requested variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created.

The Board would like D. Vredenburg to put in additional posts.

C. Fischer stated the Board should have a set time when the surveyor, applicants, the Sutherland's and the Board can meet at the site for the stakes to be placed. This way it will ensure that everyone witnessed the stakes being installed simultaneously.

R. Youngs stated there were additional people present to speak about the application.

C. Fischer stated if you would like to speak for or against the application to come forward.

J. Reynolds, a resident of 4025 Rippleton Road and Overlook Terrace, stated she is familiar with the property in question. She further stated she opposes the fence because it does not encircle the Wells property and it does not protect the hedge or the Wells from deer disturbance. She submitted pictures to the Board of the property and described the various points-of-view from the photos. She further stated the fence is going to have an adverse effect on the resale value of the property.

P. Parpard, a resident of Cazenovia, stated the trees share the line. He thinks they should put the fence on the Wells property and it would solve the problem.

C. Fischer stated they will adjourn until the November meeting and keep the public hearing open.

*Cunningham, Phillip & Tracie - #11-799 – Special Use Permit – 3500 Cobblestone Drive*

C. Fischer stated the applicant is seeking a special use permit to operate a construction services business in an RB district. He asked the applicant to explain their file to the Board.

T. Cunningham stated the property was initially 95 acres and one lot. Their shop is set up on the property and was not properly zoned. She further stated they need to subdivide their property because their homeowners insurance was going to cancel their policy because their shop was located on the same lot as their home. Therefore, they had to subdivide the property. However, they could not subdivide the lots as it was zoned because there was no residence on the lot with the shop. The zoning had to be changed to allow for the shop to sit on a lot by itself.

C. Fischer stated the Town Board recently approved the zone change.

T. Cunningham pointed out on the map the RB and RA zones for the Board. The property will be divided into two lots. The front is RA and the back is RB.

T. Cunningham further stated they need to get a special use permit for the shop which is now located in an RB zone. She said, basically, the administrative offices are operated out of the shop. The equipment is usually on the various job sites.

P. Cunningham stated if there is equipment on the site it is under cover.

P. Cunningham stated they currently have an application in with the Town to add on to the shop.

C. Fischer told the Board that the construction services business is site work. He further stated that at the October 6, 2011 Planning Board meeting the applicant received a positive recommendation, unanimously.

C. Fischer stated the matter had been published for a public hearing tonight and the required letters were sent by the applicant to the adjoining landowners.

P. Cunningham confirmed the building is about ½ mile off the road and can't be seen from Moseley Road.

C. Fischer said the application had been referred to the Madison County Planning Department and they returned a recommendation for local determination. He further stated the comments they did include pertained to the subdivision and site plan, not the special use permit.

C. Fischer asked the applicant if the required fees had been submitted to the Town.

The Zoning Board secretary stated to the applicant the balance due was \$ 3,250.00.

T. Cunningham submitted a check to the ZBA secretary for \$ 3,200.00.

T. Cunningham will communicate with the ZBA secretary if she has additional questions on the deposit.

C. Fischer stated it is his understanding the applicant will receive a large portion of the deposit back; it is, in essence, an escrow account to cover the anticipated engineering fees.

P. Cunningham stated the structure has been on site for approx. 2-3 years.

C. Fischer stated the business started out, from the town's position, as a home occupation and then the business grew.

C. Fischer announced the application had been published for a public hearing and asked if anyone was present to speak for or against the application.

Dan Hudson, a neighbor at 3979 Moseley Road, had a few questions for the applicant. His concerns were the increased truck traffic due to expansion and its effect on Moseley Road.

P. Cunningham stated there should not be much of an effect. He stated he owns one tractor trailer and one dump truck. He said, in regards to expanding, they are just trying to build a bigger building to keep things (pipe) under cover.

P. Cunningham confirmed, at this point, he does not plan on expanding his vehicle inventory. He further stated they just need a bigger building.

P. Cunningham stated he will not be stockpiling material at his site. He said he rarely brings materials back to his shop.

C. Fischer stated the code says: construction services is permitted by a special use permit which use shall not allow the outside storage of construction material or equipment.

P. Cunningham reconfirmed that they are expanding the existing structure.

T. Cunningham stated after the expansion the building will be about 20,000 sq. ft.

W. Reese stated the special use runs with the landowner. A variance runs with the land.

Motion by C. Fischer, seconded by G. Smith to close the public hearing was carried unanimously.

Motion by C. Fischer, seconded by G. Smith to appoint the Zoning Board of Appeals as Lead Agency for purposes of the State Environmental Quality Review Act (SEQRA), to declare the matter an Unlisted Action and to make a Negative Declaration of environmental significance, all based upon the Board's review of the Short EAF was carried unanimously.

Motion by R. Sheridan, seconded by L. Orbach to approve the special use permit was carried unanimously.

*Tehan, Howard – Use Variance – 2652 Route 20 East (Informal Review)*

Christian Danaher of Shulman, Curtin, & Grunder and Chad Tehan were present to informally review a potential application for 2652 Route 20 East (the old Dr. Fauth building).

C. Fischer stated Mr. Danaher contacted Roger and him a few weeks ago and requested an informal meeting. He further stated they met with Mr. Danaher to do some brainstorming. It will potentially be a use variance application before the Board. He also said a use variance may not be necessary because the Town Board is also looking at this issue for a similar change as made with Cazenovia Equipment.

C. Danaher provided the Board with tax maps and aerial views. He stated Howard and Chad Tehan have entered into a contract to purchase 2652 Route 20 East contingent upon all governmental approvals. It is located across the street from the Cazenovia Equipment site. The property is zoned Rural B.

C. Danaher stated the applicant's currently operate their business right down the road from the proposed site on Route 20 in the Town of Nelson. The Tehan's have been a franchisee of NAPA Auto Parts for approx. 30 years. The facility that they are currently operating out of has a lease agreement in which they lease half of the building. The lease runs through the end of the year.

C. Danaher said this property is Rural B and he understands a use variance is difficult and the challenges associated with it. He stated their business has three components:

1. office/business part on the second floor and under Rural B that is permissible
2. warehouse/storage (the parts they are selling) would be in the rear of the building
3. retail sale which is not permissible by special use permit under Rural B zoning.

C. Danaher stated their business is unique because it is not "hard-core" retail sales. 75% of their sales are wholesale sales which means the customer does not come to the property; they bring the product to the customer. Approximately 25% of the business is customers coming to the facility to purchase products which is roughly 20-30 customers per day.

C. Danaher said the third component (retail sales) is the obstacle because it is not permissible under Rural B.

C. Danaher stated a key component of their business is farming.

C. Danaher said they have been working a little with the Town Board.

C. Danaher stated the property has been on the market a couple of years.

C. Danaher stated the zoning with a special use permit allows the storage of auto parts and sale of vehicles, but not the sale of the auto parts, themselves.

D. Silverman stated the traffic should be similar since they are already operating the same level of service right down the road.

C. Danaher stated the building would be utilized that is already on-site. They would not change the building to blue and yellow, they would maintain the structure as is. A change would not be seen from the exterior. The signage would be the same size as currently they have.

C. Danaher stated they are requesting an expansion on the special use permit in a Rural B zone.

C. Fischer reviewed with the Board the allowed special uses in an Rural B zone which are: warehousing, vehicle sales & service, packing of pharmaceutical and/or food products, light manufacturing, hotel and motel, assembly, fabrication and packaging of previously prepared materials, animal day care, kennel or shelter.

C. Tehan said there will be no on-site vehicle sales or service; maybe an occasional wiper blade installation.

C. Fischer stated the Board very rarely receive a use variance application. He reviewed the criteria for a use variance which states an applicant must demonstrate to the Board of Appeals that the zoning has caused unnecessary hardship, which is defined to require showing:

1. That under the applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property, and
2. That the hardship is unique, and does not apply to a substantial portion of the district or neighborhood, and,
3. That the variance will not alter the essential character of the neighborhood, and
4. That the hardship is not self-created

R. Sheridan stated that vehicle sales and services is a permitted use by a special use permit. He questioned why selling vehicle parts is not services?

C. Fischer stated he thought the applicant should talk to John Langey and Roger Cook about what is “sales and service” and this should be the first step.

W. Reese stated the Code Enforcement Officer has to make the determination if this falls under “vehicle sales and service.”

C. Fischer stated if the determination was made that the use falls under this category, the applicant would need to go to the Planning Board and then to the Zoning Board of Appeals for a special use permit.



The “Fauth” building is 3,456 sq. ft.

C. Tehan stated they have 3 full time employees.

C. Danaher stated the only change would be the signage.

C. Fischer said if the applicant chooses to pursue the “use variance” route and assuming economic data is there to support the case-it would makes sense. C. Fischer further stated regarding the applications; the owner and applicant would need to sign all applications so it is clear both parties are involved.

C. Fischer reiterated to the applicants that the first step is to talk to John Langey and Roger Cook and to keep the Board informed if they want to proceed with the application.

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Motion by C. Fischer, seconded by G. Smith to adjourn the meeting was carried unanimously at 9:01 p.m.

Zoning Board of Appeals Secretary – Connie Sunderman – October 27, 2011