ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, OCTOBER 23, 2013

MEMBERS PRESENT:	MEMBERS ABSENT:
Rocco Mancini, Chairman	None
Stephanie Fitzpatrick	
Martin Otter	
John Schneider	ALSO PRESENT:
Phillip Zemke	

Chairman Mancini opened the meeting at 7:00 p.m.

Public Hearings:

1. **Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless** – Chairman Mancini motioned that, as requested by the applicant, the Zoning Board of Appeals adjourn the public hearing for Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless until the November 20th ZBA meeting as per a memo dated October 23, 2013 to Rocco Mancini, Chairman of the ZBA from Scott Olson, Esq., Young/Sommer LLC. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

2. **Leavitt Area Variance –** Jacob Bump of Bump Construction was present as the authorized representative of the property owner, Craig Leavitt, for the public hearing for Mr. Leavitt's area variance application for a front yard setback variance from 85 feet to 35 feet and an east side variance from 35 feet to zero feet for a length of 932 feet to erect a deer fence and a front yard variance from 85 feet to 35 feet for a driveway gate. The property is located at 250 Sawmill Road, tax grid number 6472-00-174298 in the A3A zoning district. Chairman Mancini read the public hearing notice that was posted in the paper and sent to neighboring landowners. Mr. Bump said his company is the contractor for the building on the property. He has read all the letters forwarded both in favor and against the granting of the variance although the nature of most letters is decidedly against. The setback reductions are requested along Sawmill and then along the northern property border along the driveway. Mr. Leavitt would like the reduction along the driveway because the existing driveway is about 10 feet off of the boundary line and there are remnants of a stone wall along the border. Mr. Leavitt would like to landscape both sides of the driveway. In order to do so, we would like to put the fence close to the property border to allow room for landscaping. Mr. Bump said at the western side of the road, there is a fairly steep incline off Sawmill. The fence itself is 7 feet tall. Ultimately, how high topographically the fence will be will depend on where on the property the fence is installed. If the fence is 35 feet off of the road, it is going to be somewhere in the neighborhood of

20 feet high off of the road in its finished elevation. If it is further up, it will be slightly higher. Mr. Otter said it will be less visible from the road as it moves back. Mr. Bump agreed and said the area is heavily wooded starting 4 or 5 feet off the road. Some of the trees are deciduous and some are not so it is hard to say ultimately how visible the fence will be. Ms. Fitzpatrick took some pictures with her phone of the driveway entrance which Mr. Bump looked at and said yes, the fence will start at the gate. The property line is about 15 feet off of the edge of the road. The visibility of the fence is also a question of how much growth there is in front of the fence. The fence decoys itself quite well. Mr. Bump brought fence samples which he displayed. He said at this point, there are no issues or concerns at the eastern or southern sides of the property where the fence is all within the required setbacks. Mr. Bump said much of this confusion probably could have been avoided if he had understood a variance was required for a deer fence. When he read the code, it says a permanent, solid structure requires "x" amount of setback. Mr. Bump said most municipalities do not consider a deer fence a permanent, solid structure due to its transparency but the Town of Milan does. He said much of the correspondence addresses concerns about locking deer out of the property and creating a safety hazard by not allowing deer to move. Mr. Bump said he tried to research this and talked to the fence company about it but it is hard to determine whether this will be the case. He said there are plenty of ways deer can get around and he does not know if the proximity to the road at either 35 feet or 85 feet will really make a difference. Mr. Bump submitted some pictures of fencing which blends in with the landscape. Mr. Otter asked what the rationale is between 35 or 85 feet as this lot is 55 acres which is not a small lot. Mr. Bump said along the road, the setback will allow the fence to tie into the driveway gate. At the northern border, the owner wants to landscape both sides of the driveway. Mr. Zemke said the fence is shown on the site plan as a dead straight line. How does the fence get installed? Mr. Bump said it would not encroach further into the setback but there will probably be jags in the line. The owner's directive here is to clear as little as possible. Mr. Zemke asked why go all the way to zero along the northern border? Mr. Bump said it is to allow room for landscaping. Mr. Zemke asked if the fence cuts through contours or do you find a contour and keep it along that contour? Mr. Bump said we try to find a straight contour and run it across. Mr. Zemke said coming off the road is all slope which comes down to a gully and the road. It appears this fence will not be in the gully or at the base of the hill but it will be part way up the slope. Chairman Mancini said the fence will be roughly 50 feet from the edge of the road. Mr. Otter asked if a plastic weed barrier is part of the fence. Mr. Bump said no, it is a metal mesh fence with metal poles that is aesthetically more pleasing, requires less maintenance and can stand up better when the trees fall. Mr. Otter asked how can they landscape if the fence is right on the property line and Mr. Bump said the owner wants to plant trees along the driveway. Mr. Otter thought it would be hard to maintain landscaping in a 10 foot area. Mr. Zemke asked if the property will be used for agriculture or livestock and Mr. Bump said the owner has no intent to use the property for ag or livestock. Mr. Otter said in 55 acres, you will be fencing in a fair population of deer. Mr. Bump said there is a well thought out

plan to remove those deer. Mr. Zemke asked what is done at the corners for the fencing and Mr. Bump said the fence is quite strong – the posts are drilled down, not cemented down, about 2 feet. Mr. Schneider asked if the spot shown is exactly where the gate will go and Mr. Bump said the conduit has been run to that location. The gate design is for two stone pillars with a wooden gate in between. Chairman Mancini said he has seen this type of fencing put up in other locations and asked how successful the fence is as far as the deer not running into it. Mr. Bump said none of these solutions are bullet proof. Ultimately, deer will find a way onto the property. However, the fence is very strong and is a deterrent and has been designed to prevent a clear leap over the fence. He said as far as he knows, deer do not have a tendency to ram through the fence and the company is very efficient in finding any breakdown in the perimeter. He said there has to be a grate at the entrance gate when it is open. The fence must be maintained regularly. The contractor has to walk the property twice a year. Mr. Bump said he has been working with the property owner for about a year and a half; he wants to find an equitable solution.

Chairman Mancini read the rules of conduct and opened the public hearing. The following people submitted comment letters: Neil Lipke, 247 Sawmill, October 2nd and October 20; Ann Pettibone, 63 Sawmill, October 7th ; Donald and Ann Green, 221 Sawmill, October 9th; Brian and Laura Tsai, 251 Sawmill, October 12th; Gloria and Mark Hage, 245 Sawmill, October 17th; Robert Riccobono, 63 Sawmill, October 20th' Joan Howe, October 21st; Lise Poirier, 249 Sawmill, October 21st; Ben Hoen and Tricia Paffendorf, 20 Sawmill, October 21st; Russ Crafton and Francisco Pujol, 15 Shookville, October 21st; Lise Poirier and Werner Pfeiffer, 249 Sawmill, October 21st; Sandra Rancich Omeara, 97 and 102 Sawmill Road, October 23rd. These letters are available at the Zoning Office.

Neil Lipke, 247 Sawmill Road, said he is in opposition to the granting of this variance and sent an email. He said even if the fence blends in well with the environment and is 40 feet back with growth, the deer can't tell. From a safety standpoint, there is the sloping part of Sawmill, the hill at the top, and there are tons of deer in this area. Any deer can run into the woods due to a car, get to a fence, turn around, and jump back into the middle of the road. No one knows how the deer will behave. There is a requirement for 85 feet for a reason and this board should err on the side of caution especially with a narrow road with a blind spot. If you do decide to grant a full or partial variance, including the gate, I would ask you respect the existing setback. The property curves about 80 to 100 feet back and even if the fence is well camouflaged, the gate is not. On the northern wall, if you only have 4 or 5 feet, what landscaping can you do and why put a fence up to protect a bush that a snow plow will obliterate anyway? Ben Hoen, 20 Sawmill Road, said they have two boys that ride the school bus and are concerned about safety issues on the road. We are not immediate to this vicinity so can't see it every day but we are very conscience of deer every day. There is a wide open wilderness in this area and the deer population is quite high. We are opposed to the variance. At this point, since the fence is not up yet, it is not a

hardship to deny the variance. All decisions can be reflected in a changed building plan. Later on, once the fence is built, it would be difficult. There are a few questions to be weighed – will this create an undesirable change in the character of the neighborhood, can this be achieved by another means other than a variance, is this variance substantial, will this have an adverse effect on the conditions in the neighborhood, is it self-created? Will this variance have an effect on the health and safety of the neighborhood? He enumerated his concerns in his letter and is speaking against allowing the variance. It is a self-created choice to put the gate where they chose when they could have put it much higher up allowing the fence to skirt the inside of the driveway up the hill and where the driveway turns, go through the gate. As far as landscaping along the driveway, there are plenty of deer resistance trees and ways to wrap them to make them undesirable as well as deer resistance landscaping. This would allow a fence to exist within the required setbacks and the owner could achieve his desired results. Again, none of this has happened yet so there is no hardship. Ann Green, 221 Sawmill Road, said the entire front of our property faces Mr. Leavitt's property and a good portion of the 1,760 feet of fence which will be visible from Sawmill Road is right in front of house. This is the map distributed with the application and shows the elevation. It illustrates that if the 85 foot legal setback was followed, the fence would be installed on a pretty level area. There is no evidence there will be landscaping in the steep area along Sawmill Road. It would be tough to put a fence or shrubbery in that steep elevation. It is beautiful rock and it goes straight up. We would like to see the fence at 85 feet then the owner gets the benefit and we get to keep the beauty. We know what the fence material is today and that a variance is forever. We are afraid a new fence may be put in at some point. There is no landscaping along the fence along the road. We are concerned that the nature of the fence may change over time. Danger is a real concern and should be to the town. Deer will be confused and run back into the road; it happens now without a fence when their path is impacted. Fencing that much land will have an effect on all species. Ms. Green said she is worried about life threatening accidents. School buses zoom over that hill and she is worried about deer bouncing back and forth. It is clear in section 200-60(2) that it is up to the property owner to demonstrate that there is no other benefit that he can pursue aside from a variance. She said it is feasible that this fence could be put at the top of the hill out of view of the road. We support deer fences and protecting landscaping but to have a fence 1,700 feet along Sawmill with no landscaping where the whole rest of the property is landscaped does not make any sense. Don and I ask the Board to consider this carefully and to not permit the variance. Also, the zero setback up on the north side of the property is disrespectful and should be considered carefully. Asking for zero clearance is not a good thing and there is no reason for it. Russ Crafton said he and Francisco Pujol own the property adjacent to the zero setback. He agrees with the other comments relative to 35 feet versus 85 feet of road frontage. As far as the zero setback for 932 feet, he can meet the 35 foot setback by putting the fence on the other side of the driveway and having the gate further up the hill. He could not do much in the way of landscaping in 2 or 3 feet anyway. We recently put in a ton of

landscaping, all deer resistant and it was not touched. The property is heavily forested on our side where trees and branches regularly fall. What is our liability if branches from our trees crush the fence. With a zero setback, he can't maintain and prune our trees but does that put a new burden on us to maintain the trees and branches so they don't fall on his fence? Mr. Crafton said we do have 57 acres under a forestry exemption. There are 20 acres separated out that we may sell and one building spot would be close to the fence right on the line. The fence right on the property line will impair the value of our property. If we don't sell, then we will put the land under forestry so will we have to cut down trees that may fall on his fence? An easy solution is to put the fence on the other side of the driveway and landscape with deer resistance trees and plants. Mr. Pujol said it is a safety issue also. He has worked with insurance properties and if there is an accident and a variance has been granted, they will come after the town for changing rules that were not necessary to change. Our property abuts the proposed zero clearance. If we were to sell, the value of having a fence right up to the property line will impact our property value which will cause us a monetary hardship which can be avoided. What is the reason to grant the variance – there is no hardship. It is to benefit one individual only versus the rest of the community. It is a whimsical desire to have different landscaping. Karen Lipke, 247 Sawmill, said she is concerned about the safety of her middle school and elementary school age children. They wait at the bottom of their driveway 4 times a day and are always looking at deer crossing the street at the house, directly across from the driveway. There are buses and construction trucks and the deer go all over. A fence or gate very close to road will cause the deer to run right back onto the road because that is what they do. On Ann Green's property, they run across the street, not towards her house. This fence is what is on the plan but if and when this fence fails due to a tree falling or a bear trying to go through, what will the fence look like then or in 10 years? She has concerns about the aesthetics. She said she does not want to look at a gate that looks like a prison gate. Larry Berman said he was hoping to meet the neighbor, the property owner. He said to reiterate, there is zoning in place for a reason. People buy properties, they know what the zoning is, and the value is based on the zoning to them and neighbors. To get a variance, standards need to be met. The protection of 50 acres by moving a deer fence out to the furthest boundaries does not seem to rise to the cause of changing zoning. There needs to be a reason to reduce setbacks and standards need to be met to allow a variance, not only for this case but all cases. Zoning should not be allowing variances to be granted on a willy nilly basis. Also, a well thought out plan to remove deer was mentioned - what is that plan? Brian Tsai, 251 Sawmill Road, said he wrote a letter. He walks his dog along the property line. There is a 10 foot ditch that is grass then goes straight up which is a rock face. He said you either have to put the fence 10 feet away from the asphalt or back 85 feet. You can't put a fence in bedrock. Section 200-60(2) has five issues the board has to face. He thinks the answer is yes to all five questions. These laws are meant to be consistent with the spirit and intent of the neighborhood. He is asking the board to help in your fiduciary responsibilities. When we moved in, we respected the requirements and did not want to change the character of the neighborhood. If

Mr. Leavitt does not want to see the fence, why should we? Why have a zero setback fence that could damage the neighbor's property? This neighborhood represents a lot of tax revenue, more than 10% of the town's revenue. The board should come up with a solution. He said he understands the guy is excited for his new house but there needs to be a reasonable solution or a plan b such as deer deterrent landscaping. Mr. Bump said he can't determine, as far as a safety issue, what the difference is between an 85 foot or a 35 foot setback. The 35 foot setback is effectively 50 feet off the road. Will that extra 30 some odd feet allow the deer more room to turn around, to stay – he is not sure – what does that extra 30 feet get you. The case for pushing the fence uphill further is a valid one and he said he can talk to Mr. Leavitt about that. Mr. Bump said his perspective on the northern boundary is that Mr. Leavitt would like to be able to landscape both sides of driveway from the gate up and follow driveway contours. This is a pre-existing non-conforming condition on driveway. Mr. Zemke asked if he would consider locating the fence at the top of the hill? Mr. Bump said he believes he would. The logic to this placement was the ability to tie into the gate. The fence could probably jog around and tie into the gate if we put it up higher. The property owner would like to have both sides of the driveway landscaped. Some areas are wider and some are narrow, going from 5 feet to much wider. If the fence is put on the southern side of the driveway, both sides can't be protected. When he spoke to the deer fence contractors, the fence can be maintained from one side of the property. Having worked with his client, this fence is protecting the investment in the landscaping. Mr. Leavitt has told him he has zero interest in putting up any solid fence; that is not his objective. He does not want a gated property in any way. Mr. Bump said they can't landscape both sides of the property unless the fence is on the northern side since the property line is so close to the driveway. Mr. Leavitt's response is that he wants to preserve the landscaping on both sides of the driveway. Mr. Otter asked if the driveway can be moved and Mr. Bump said all the drainage has been done and the underlayment is down and roughed in which was a serious amount of work. Also, part of this lot is fully wooded. Mr. Bump said the original building permit included the gate at 35 feet off the road. The deer fence was not filed with the permit but the gate was so he wonders what the criteria is for a driveway gate – does it have to be 85 feet off the line. Mr. Zemke said the town does not have a fencing ordinance, the requirements for a fence fall into the building ordinance requirements for structures. Mr. Bump said the conduit and transformer have been installed to that gate location and to push the gate back would mean driving a good ways up the driveway before you get to the gate which presents its own challenges. Karen Lipke said Mr. Leavitt can do landscaping on both sides of the driveway using different species that are deer resistance. She said she has a lot of landscaping on her property that the deer do not eat. Mr. Pujol said as the zero lot line neighbor, based on what he has heard, this issue is about landscaping. Reiterating what Ms. Lipke said, you can landscape both sides of fence using deer resistant materials. He suggested getting a landscaping company to help. If he plants deer resistance plants and sprays during the winter, it would not prevent him from doing landscaping. Ann Green said she senses Mr. Leavitt would

accept an 85 setback and she urged the board to vote on that. It is pretty clear he is not going to landscape below 35 feet. The setback issue is all about the gate. Mr. Berman said landscaping is an issue of aesthetics. He requests the board review the code as you are here to uphold the code and enforce the code. He is asking the board as fiduciaries to uphold the code. Francesco Pujol said he is personally concerned about the value of his land if he sells the acres adjacent to this property; the property value will decrease with the fence on the line. There is no reason to not follow the code. Ann Green said as far as safety, 50 feet makes a difference for deer and if the difference between 35 feet and 85 feet saves one life or prevents one accident, it is worth it. Terry Howlet, 128 Sawmill Road, agrees with everyone here and asked once a fence is approved and a variance is granted, can it be changed later on to any type of fence they want? Putting this fence through 50 acres of woods, iron mesh through woods, branches will fall, trees will fall, there is a creek that can be a raging torrent or bone dry that they are putting the mesh across, with all these elements, the fence will not hold up. She thinks there is a hidden agenda and that once they are approved for this fence, down the road, we will be looking at a monstrosity of a fence next to the road and through the woods. Also, she said she can't reiterate safety issues enough.

Hearing no further public comment, Mr. Schneider motioned to close the public hearing. Mr. Otter seconded. All aye. Motion carried 5-0.

Mr. Schneider said he visited the property. He walked up the driveway as far as he could, the driveway is quite long, and never saw a structure. There is a 10 foot gully and a rock ledge that runs about 900 feet, 15 to 20 feet high, then levels off. You can physically stand there and see what the neighbors will look at. As far as moving the gate back, gates look very "estate-ish" and Mr. Schneider said personally, he likes the appearance of a gate with landscaping. However, there is plenty of room to move it back. If they are required to move the gate back to 85 feet, how would it tie into the gate. If the gate is moved back 85 feet, it takes away from the presence of the gate along the road. Mr. Zemke said the gate is probably there for security reasons as well. He said he has seen many examples of wire fencing along this road and in town. Deer will run no matter what and they will learn the fence is there so won't run to that property. Mr. Zemke said the house and construction have already disrupted the deer. Mr. Otter said there is no overwhelming reason to not meet the setback. They won't put the fence in the rock ledge anyway. Mr. Zemke said the intent is to fence in the yard and tie into the gate. What is the point of putting the gate back on the driveway – the gate will be a handsome structure and, typically, gates are found next to the property line at the bottom of a driveway. Ms. Fitzpatrick said the stone wall is not that close to the driveway – they could landscape on either side. Mr. Schneider agreed and said on either side of the driveway, there is a drop off for drainage – they could landscape on the outside of the gully on both sides. Ms. Fitzpatrick said she does not think the fence will be visible but the gate will be visible. Right up against the stone wall are woods. The gate should be visible to the road as part of the reason it is there is probably for security reasons. One suggestion is to leave

the gate where it is, put the fence back further, then come back down and tie into the gate. Drop down to zero only where you absolutely need to. Mr. Schneider said another reason to leave the gate along the road is if someone is driving up the driveway and encounters a locked gate, he would have to back all the way out. Mr. Bump said these things are best worked out with the neighbors. He knows that Mr. Leavitt has not spoken to Mr. Pujol and Mr. Crafton. Their first notification was when they saw it in the paper. What it comes down to is respect for their property value and Mr. Leavitt's desire to landscape. Mr. Bump asked the board to put off making a decision until the next meeting to give them a chance to discuss with the neighbors and to try to find a solution. Mr. Zemke asked Mr. Bump to show where the fence will actually be along the line opposite the proposed zero boundary, show how the fence will work with the rocks, trees and slopes. Where will the fence go based on these contours. If you laid it out, what is the actual location. Mr. Bump said the fence will be hard to see wherever it is on the hill. Mr. Zemke said it appears the board is in agreement to leave the gate where it is for security reasons and safety reasons but would urge Mr. Leavitt to reach out to the neighbors, have some dialogue, and try to reach a compromise. Mr. Bump also suggested the ZBA may want to put a condition on the variance that dictates this can never be a solid fence.

Mr. Schneider motioned that the Zoning Board of Appeals adjourn this application until the November 20th ZBA meeting. Mr. Zemke seconded. All aye. Motion carried 5-0.

Applications:

1. **Rufflands LLC Request for Interpretation** - Amanda Bodian appeared regarding the Rufflands request for interpretation subsequent to receiving a cease and desist order dated September 16, 2013 on property located at 166 Milan Hill Road, tax grid number 6472-00-875130 in the A3A zoning district. Ms. Bodian said they have been renting the house at Rufflands to tenants who have weddings on the property. She said they do not do any catering or tents. She said she does have a website that advertises the property to use as a venue for weddings. She said she did not know that it would be a problem with the zoning law. The tenants take care of their own catering and tent needs. Mr. Zemke asked what the property is used for and Ms. Bodian said she rents property to farmers who have about 120 head of cattle. She said they keep goats and sheep. She said it is a farm and on occasion, we lend out portions of the property for weddings. Mr. Otter said the website lists Rufflands as a venue for events. When asked, Ms. Bodian said it is not a bed and breakfast. The people stay at the house which holds 14 people. It is a 6,000 square foot house and she said she does live there. The weddings are outside in tents or the barn. When asked, she said the guest number is not limited but she would be agreeable to setting a limit in the future. There is plenty of parking on the site. Mr. Zemke said as far as the request for interpretation, the Board will have to determine whether this is an allowed use in

the town. Chairman Mancini said he would like to do a site visit so will schedule that with Ms. Bodian for some time prior to the next meeting.

The Board agreed the application was complete. Ms. Fitzpatrick motioned to set the date for the public hearing to be held at the November 20, 2013 ZBA meeting. Mr. Otter seconded. All aye. Motion carried 5-0.

2. **Barrett Area Variance** – Pat Barrett was present for his area variance application to Table B, Schedule of Use Regulations, to allow a two lot subdivision which would reduce the minimum lot width at the building line to under the required 300 feet on property located on Barrett Lane, tax grid number 6573-00-023892 in the A3A zoning district. The Planning Board sent a positive recommendation to the ZBA to reduce the lot width for Lot 1 to 137.18 feet and for Lot 2 to be 187.29 feet where 300 feet are required. Mr. Barrett said the lot has two pre-existing, non-conforming residences on it now and he is working with the Planning Board to subdivide and give each residence its own lot which will bring this situation into conformance with the zoning ordinance. Both houses were built in the 40's or 50's. He is dividing the lot right down the middle. The Board agreed the application was complete.

   Mr. Zemke motioned to set the date for the public hearing to be held at the November 20th ZBA meeting. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

3. **NeJame Pools (Dell) Area Variance** – Chris NeJame was present as the authorized representative for Kenneth Dell. Mr. Dell is requesting an area variance to Section 200-18.A.2 to allow an in-ground pool to be located in front of the front building line of the dwelling. The property is located at 99 South Road, tax grid number 6571-00-960188 in the R2A zoning district. Mr. NeJame said there is no survey on file for this property so he submitted a hand drawn sketch and renditions of what the pool area will look like. Mr. NeJame said the pool will not be located in the front setback area as it is far enough off the road but it is in the front of the dwelling. He said the house is situated such that the front of the house is not pointing towards the front yard which is why they are putting the pool in the proposed location. Chairman Mancini said the Board may want to do a site visit so Mr. NeJame said he will stake out the pool. When asked, he said the pool will be fenced and the fencing will meet NYS Code. The pool will not be seen from the road. Mr. Zemke said he would like to see a better site plan submitted before the public hearing that shows the pool, the road, and the relationship between them as well as the proposed fencing. Mr. NeJame said he will submit that drawing within the week. The Board agreed the application is complete pending receipt of the updated drawing.

   Mr. Schneider motioned that the Board set the date for the public hearing to be held at the November 20th ZBA meeting pending receipt of the updated drawing. Mr. Zemke seconded. All aye. Motion carried 5-0.

Approval of Minutes:

- Mr. Zemke motioned that the ZBA accept the minutes of September 25th as presented. Mr. Otter seconded. Motion carried 5 -0.

Discussion Items: None

The next meeting will be held on Wednesday, November 20, 2013 (**third Wednesday of the month)** at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board