

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL  
WEDNESDAY, NOVEMBER 20, 2013

MEMBERS PRESENT:

Rocco Mancini, Chairman  
Martin Otter  
John Schneider  
Phillip Zemke

MEMBERS ABSENT:

Stephanie Fitzpatrick

ALSO PRESENT:

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

**Applications:**

1. **Leavitt Area Variance** – As requested by the applicant, this application has been postponed until the December 18, 2013 ZBA meeting.

**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 December 18th ZBA meeting as per an email from Scott Olson, Esq., Young/Sommer LLC. Mr. Otter seconded. All aye. Motion carried 4-0.
2. **Patrick Barrett Area Variance** – Pat Barrett was present for the public hearing for his area variance application to reduce the required minimum lot width to allow a subdivision to continue with the Planning Board on property located on Barrett Lane, tax grid number 6573-00-023892. Chairman Mancini read the legal notice that was published in the paper and sent to neighboring landowners and opened the public hearing. Mr. Barrett said originally, there were three pre-existing dwellings on this property, a trailer and two houses. He has removed the trailer. The lot is non-conforming now. Mr. Barrett is working with the Planning Board to subdivide the lot so each house has its own lot. The lots meet all the area and bulk requirements except for minimum lot width at the building line which is 300 feet in the A3A zoning district. Nothing is physically changing on the property. Mr. Zemke said the Planning Board has provided a positive recommendation to the ZBA to allow the variance. Mr. Zemke said this is the best way to proceed so that each house is on its own lot. Each house has its own well and septic. Mr. Zemke said he was comfortable with the Planning Board recommendation and the Board agreed with that.

Hearing no public comment, Mr. Zemke motioned to close the public hearing for the Barrett area variance application. Mr. Schneider seconded. All aye. Motion carried 4-0.

The Board completed the Findings and Decision which stated there will not be an undesirable change in the neighborhood as the two houses are pre-existing, the benefit sought cannot be achieved by a feasible alternative, the variance is not substantial, it will not have an adverse impact on the conditions in the neighborhood, and the alleged difficulty was not self-created. There were no conditions for this variance. Mr. Zemke motioned that the ZBA approve the Findings and Decision to allow a reduction in minimum lot width at the building line for Lot 1 to be 137.18 feet and for Lot 2 to be 187.29 feet where 300 feet are required to allow the applicant to proceed with a two lot subdivision with the Planning Board. Mr. Schneider seconded. All aye. Motion carried 4-0.

- 3. Kenneth Dell Area Variance** – Chris NeJame from NeJame pools was present as the authorized representative of the applicant, Kenneth Dell for the public hearing to allow an in-ground pool to be located in front of the front building line of the dwelling on property located at 99 South Road, tax grid number 6571-00-960188. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners and opened the public hearing. Mr. NeJame said the Board did come out and do a site visit. This area is, by definition in the zoning code, the front yard. In reality, due to the house alignment, it is a side yard and back yard. The front door is facing the other way. Mr. Zemke said the yard is flat and then drops away. In vertical elevation, it is a significant drop. Mr. NeJame said the drop is in excess of 70 or 80 feet and it is a wooded area. There will be no visual impact from the road. The house is not visible from the road so the pool will not be either. In response to a question, Mr. NeJame said they are moving the utility pole with the intention to put the pole next to the driveway and bring the power up to the driveway mostly for the visual impact. They located the pool in that spot as it is essentially the back yard. They will not be doing any clearing. It can't go anywhere else on the site to make the view and impact work. It looks like there is a lot of rock in other areas around the perimeter. Mr. NeJame said he understands that they hit a lot of rock installing the structure that is opposite the front door. Chairman Mancini read the rules of conduct for a public hearing. Maria Fitzgibbon, an adjoining property owner, asked for clarification as to where the pool is with respect to her property line. She said she does not want the wastewater from the pool with chlorine, etc. to drain onto her property. She has a pond and wetlands on her property. Mr. NeJame showed her where the pool was going, which is nowhere near Ms. Fitzgibbons property line, and told her the pool has a cartridge filter which does not backwash. Ms. Fitzgibbons said she has no problem with the pool now that she understands where it is being installed. There was no other public comment.

The Board completed the Findings and Decision which stated there will not be an undesirable change in the neighborhood as the front yard is a heavily wooded

slope so the pool will not be visible from the road, the benefit sought cannot be achieved by a feasible alternative, the variance is not substantial, it will not have an adverse impact on the conditions in the neighborhood, and the alleged difficulty was self-created. There were no conditions for this variance. Mr. Schneider motioned that the ZBA approve the Findings and Decision granting the requested area variance to allow an in-ground pool to be located in front of the front building line of the dwelling. Mr. Zemke seconded. All aye. Motion carried 4-0.

- 4. Rufflands, LLC Request for Interpretation** – Amanda Bodian was present for the public hearing for her request for an interpretation regarding a Cease and Desist order dated September 16, 2013 relative to 166 Milan Hill Road, tax parcel 6472-00-875130. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners and opened the public hearing. Elliot Bodian said he was present to speak on behalf of Amanda Bodian. Mr. Bodian said they are asking to continue to have the ability to rent their property with the intent to allow renters to hold weddings on the property. He said he knows concerns from neighbors have been voiced but we think we can compromise on those. We are all here for same reason – we want Milan to stay the way it is today. We don't have urban sprawl – this is a nice town and we want to keep it that way. We won't be able to do that without some source of income. Horticulture or raising animals is not viable today as most of the money would have to go to taxes. Tourism brings revenue into the town. If we can rent the property for the weekend and allow the renters to hold events there, we are looking at supporting local caterers, florists, and other local businesses such as bed and breakfasts, landscaping, and transportation. These are all benefits to the town. Without businesses to bring money into the town, you will see some sort of change. Our taxes will be raised. He said he is aware of the concern raised about people not wanting this in their backyard. We want to work within the limits of the law and keep neighbors happy. Without allowing us, and allowing larger tracts of land to be rented, property owners would need to look for other ways to generate income which include subdivisions and developments which none of us want. As far as the noise ordinances, Mr. Bodian said he believes it would be easy to keep noise within the ordinance by looking at the layout of the land and limiting the locations on the farm where we have these events. As concerns come up, we are more than happy to address them, including limiting the number of people. New York State makes a big distinction between 99 people and over 99 people. We are open to compromise. We believe this is what is going to allow the town as a whole to maintain the great characteristics of what we are concerned about. Mr. Zemke asked what is the average size of the weddings. Mr. Bodian said he believes it would be around 75 to 80 people. Mr. Zemke asked how many people stay on the property the night before and the day after. Mr. Bodian said the bridal party stays the night before but not the groom. Most of the other guests, other than immediate family, will stay in the surrounding area. Some of them get together and rent a house. Mr. Zemke said so you have bedrooms in the main house for the bridal party, then you have facilities outside of that for the actual

wedding. Mr. Bodian said yes, the barn outside. Mr. Zemke asked what is the plan for frequency of events per year. Mr. Bodian said we did 16 weddings this past calendar year. That would probably be about the norm and they are typically held on Saturdays. The facilities are not heated. Mr. Zemke said he tried to find a use to apply this to in the zoning code but he did not find anything. Town law states a permit is required from the Town when there are over 1,000 people for a festival. He said he had some trouble defining what this was. He also said he could not find anything in adjoining towns in their zoning laws. He also looked at the state agriculture law as farms do have a certain protection but there was no mention of this type of use there either. He said he came up blank trying to find a use. Mr. Schneider said he also searched and under definitions in the Milan code, it is definitely not covered. The closest use he could find was business services in the Highway Business district. This use is located in the A3A zoning. Mr. Zemke said we are here to respond to the buildings inspector's letter that this is not a valid use allowed under the zoning code. Chairman Mancini said the following letters have been received and are in the file: Esther Allen dated November 16<sup>th</sup>, Phillip and Katherine Berry dated November 14<sup>th</sup>, Gillian Brundrett dated November 14<sup>th</sup>, and Robert Williamson dated November 19<sup>th</sup>. Copies can be obtained by request from the zoning office.

Chairman Mancini read the rules of conduct for a public hearing and opened the public hearing. Tammy DelGuidice, 194 Milan Hill Road, said this is her backyard you are talking about. They have a deck that overlooks this property. She said she understands we need business but this is, for her, destroying what we are talking about, a peaceful existence on your own property. She said every Saturday night during the summer, we can't sit on the deck, we have to close our windows and put on the air conditioner. She said it is so close she feels like she should have brought the bride and groom a gift; they can even hear the emcee of the event. There were times she wanted to call the police but felt that it would be a poor use of law enforcement. The noise starts on Friday nights as continues through Saturday nights. For 16 weeks, we could not enjoy our home. We have teenagers and we teach them to respect their neighbors, not play loud music, etc. They can have friends over but must be cognizant of how they act. With this going on next door, these weddings every single Saturday, we can't entertain in the summer. It takes away what we are striving to preserve, it is gone for us. Ms. DelGuidice said her other concern is the enormous amount of traffic up and down the road. She said she has young drivers in her house and is concerned with so many people leaving late at night at the same time after having had a great time at a wedding with no police presence. This is not the business district yet there has been a commercial business operating all summer long. Jayne Keyes DelGuidice said she has lived here for 30 years, loves her property, and has made a beautiful home. She said she loves that it is quiet and chose to move up here to a country house 18 years ago. Now, she said, it has all turned and she lives near a party venue. She showed the Board pictures. She said there is loud singing, dancing, very large catering, and the barn is very very old. She said she is worried about it not being inspected with that number of people inside, there are

lanterns lit with candles that go over my property, people smoke cigars outside the barn with all the hay around. She said there is a party every single weekend. They have a website that advertises plenty of room for camping so pitch a tent. There are people drinking. Ms. DelGuidice said people have come onto her property searching for firewood. She said it makes her feel very insecure. She said her grandchildren can't have friends over on the weekends because it is too loud. The parties go on all weekend long, day and night, with dancing here, lawn croquet there. She said three people have come onto her property thinking we were the wedding venue. This is not living in the country and is not why I moved here. I feel like I am living next to a dance hall. She suggested the Board google Ruffland Farm where you will find pages and pages of weddings. Ethel Barone, a resident, said she did the Milan Farmers Market this year with several other farms and it did very well. People came out and appreciated it and she said a lot of those people were people coming up from the city who want to see the country and want to be part of the farm movement but don't get out to this area unless an event such as a wedding brings them out here. This type of venue brings people past our door and helps a lot of people to make money in an area where there is a lot of competition. Farms make noise, not just weddings, we run equipment for hours, farms are noisy and stinky. This does not seem like a lot of noise compared to my farm. Pat Holden who owns The Red Hook Country Inn, said she is here to support a business that is benefiting our business but does feel badly and would be upset having the noise factor right next door. She said she is the type of person who tries to come up with a compromise so there can be a win win situation. May neighbors can work with the farm to have time constraints. She said she is on the tourist board for the Hudson Valley and is a director for Hudson valley lodging. Hudson valley is advertising and NYS is advertising, come to the country. There are photos of weddings held in the country and there are major wedding venues around the country to provide a place for these weddings. These are the types of places people escape the city for. When they come up, they spend their money in our shops, farmers markets, b and b's. She said before this came up, she did not know Amanda but she is her neighbor in the antique store. Ms. Holden said she has not heard anything on the negative side on the business end of it, just positive. People are coming here and are spending money in Stanfordville, Red Hook, Milan. She said maybe there can be a compromise to still enable the farm to have the events with certain constraints that would work for everyone and still benefit the commerce in the area. The Hudson valley is a major draw and with more money being spent on advertising to bring people to our area, we need to have places for them to go, not just shopping, wineries and mansion tours. Country weddings are the wave of the future. She said the B&B in Rhinebeck was down by 30% in weddings because weddings are starting to go to the farm venues. She said she hopes they can work out the problems with the neighbors as she is appreciative of the business it brings to the area. Hugh Piney, catering director of Terrapin, said he has catered weddings at Ruffland Farms. The Hudson valley has become a burgeoning wedding experience since the Clinton wedding. We at Terrapin support local farmers, local growers, local producers, employ local kids, and chefs. We buy local. We encourage clients to

stay local and to spend their money up here. It comes with the territory. We all compromise. The owner of Rufflands has said they are willing to compromise on sound. Farmers in the Hudson Valley have been trying to come up with ways of making money. This is a working farm. We've been losing farms in the Hudson Valley hand over fist. Mr. Piney said he has lived here for 20 years and now there are half the number of farms. There is nowhere to sell anything. Farms can turn into real estate tracts of ugly housing. This is a way to keep a working farm in the Hudson Valley that caters to a unique group of people. There are a number of estates up and down the river. This is a unique location, a gorgeous location. Issues with neighbors can be dealt with. This is a unique place. There are only one or two other locations that can handle 150 to 200 people. We need to bring people up to the Hudson Valley to realize the beauty and services which are an intimate part of why we live here. People who live here need an affordable tax base. A working business for this farm is essential. They are trying not to subdivide. Jeanne Morris, 28 Ridge Road, said congratulations to all of you who are benefiting. I moved into my house in 1993 for peace and quiet. Every weekend there are bands and dj's echoing horrible nonsense. This has destroyed my entire summer. While they are reaping the benefits, my property value will go downhill very quickly if this continues. The noise is out of control. I hear people yelling all day until 11 to midnight all summer. I don't have a problem with just renting the house, but if this is going to be a business, it has to go through the necessary approvals. This is ridiculous. Stan Jacoby, Field Road, said he has known the Bodians for 30 years and they are reasonable and considerate people. He believe a resolution is possible. This is beneficial to tourism. When you are selling land, it helps to have a lot of people coming into the area and then go back after a positive experience and mention Milan to their friends and family. John Shea is the caretaker of the property and has seen some of the weddings and believes this is an asset to the community. It brings in some revenue and helps other local farmers. He does agree with the noise and said he wishes people had talked to Amanda about their concerns. The area is down in that valley and it does echo. Something should be able to be worked out. He said he has known this farm since the Landowers had it and would hate to see it developed. With such beautiful aesthetics, something should be able to be worked out. Neighbors should be able to work things out together. Jamie Parry said he is a Milan resident and is the owner of the Fork in the Road restaurant. Tourism is here to stay in the Hudson Valley. He sympathizes with everything he has heard here tonight but feels a compromise is needed. Venues are popping up in adjacent towns. Here is a place that is functioning in Milan. There has to be a compromise in terms of noise. The neighbor's peace of mind is as valuable as any sort of business. Mr. Parry said he has done some of these events this year. Three years ago he did two weddings, three years ago eight weddings, and this year, 23 weddings. He said my business is in a sure footing and he is staying in Milan and contributing as a functioning and well known restaurant. He said his business is intact and well-regarded. He employs 10 people and at the height of the season, almost 40. There are important things happening here. Robert Rogoszewski, Jackson Corners Road, said he and his wife own the Jackson

Corners General Store. Our business is the oldest business in town, almost in this country. It has been operating since 1773. He said neighbors have talked about noise and lights. Try living on Jackson Corners Road with the traffic coming off the Taconic day in and day out, all hours of the night. Living here there are things you need to deal with. Milan needs to go back to the master plan and look for allowances of home businesses. It is something that should not be overlooked or avoided. We know how small the town is and should concentrate on bringing in as much business as we can without changing the look of the town. Albrecht Pichler, owner of Morehouse Farm across the street at 141 Milan Hill Road, said there are a lot of people happy about this who benefit from it. Does any one of them live next door? The noise goes on all night, sometimes until 2 a.m. Living with it is not the answer. We came here because it is quiet. We want to keep it that way. In terms of cooperation, when the cease and desist order was issued, nothing changed. The following weekend, the noise went up and went on til 2 a.m. We had to call the police. There was the noise and the thumping all night. I had to close my windows all summer. He said he does not think something like this can be controlled. A wedding will be noisy and you can't say that is not going to happen. You can't put a fence up to prevent them from going on other properties. It's like a public park. No one has any idea of property rights. It is a culture of its own. The business should be in or near the business district or a farm that does not have neighbors. This noise travels very far. Where Steve Hobson lives, beyond the power lines, he hears it. It does not just impact your immediate neighbors. Certain sounds carry very far. You can scale it down and for a while it may be quiet, then it will go right back to where it was. The benefits people get should not be taken on the backs of the immediate neighbors. Joanna Bard who owns the Hemmingway Lane B&B in Milan, said this is painful to listen too. I, too, can empathize with surrounding landowners and noise. I don't hear it, but imagining it is not a comfortable thing. But, she said she also agrees with some of the speakers. She said she doesn't know how, but it would be nice to find a compromise. She had two sets of guests from weddings this summer which was helpful to her. She said she, too, was at the Hudson Valley lodging meeting today. There are going to be more and more weddings. This is a destination place. She said it feels strange to be talking like this but she also feels for the other issues. David Borenstein said he owns the farm adjacent to Rufflands, and said it is a very difficult situation. He knows all these people very well. He said he doesn't know what it would be like to live next to that noise. He said the question for this board is what is allowed by law. Issues of commerce are important, but what is before you now isn't whether or not it is a wonderful thing. Laws and decibels that have to be abided by, what is this board's position? What are your conclusions? What is in the zoning ordinance? Is this in the business district? This is not about personalities or commerce or peace and quiet. Whatever conclusion is reached, I would want it cited in the law. This is what it is. If it's not in the book, it is not allowed under the law. Ms. DelGuidice said she did focus on the noise but it is not only the noise. The fact is, 75 to 100 people congregate in a barn that has not been inspected. It is dangerous. There are laws by state, by different municipalities, that inspect these places. That is not

being done here. Every weekend, there are all these people in the barn, smoking cigars around hay. What happens when their barn burns down and flies to my house. That has to be taken into consideration. Also, what is the homeowner's responsibility with people drinking on our little road and then going out. We all know of dangerous accidents on the corner of Milan Hill Road and 199. What happens then? Are we going to be proactive or reactive. If it is run like a business, it should be run like a business. Jeanne Morris said this property is for sale. Will it be sold as a business or a house? Albrecht Pichler said if you set a precedent here, that could snowball and happen all over the place. Once it is violated once, it will happen again and again. That is the time to move away. Al LoBrutto said Dave Borenstein is right on the money. What is allowed in the ag district where they are located? Is this use allowed there or isn't it? if it is not allowed under zoning, it is not allowed and you can't vary a use that is not allowed by the code. Colleen Meehan said we all have trouble paying taxes, and she echoes what David and Al said. This is agricultural, whether you run a farm or not. We don't do the farming, other people help us. She said she does understand about another source of income. She asked the Board to please look at the zoning book,. This is not the kind of area that can sustain a business like this. When I looked at this on line, it looks big, Rhinecliff Hotel big. Elliot Bodian said he worked as a professional engineer for a fire inspection company for a long time and has been a fire fighter for a long time. He is familiar with codes and equipment. He said there is no hay storage where people are smoking. He said the buildings have adequate fire extinguishers and adequate exits, and there is no significant risk of fire spreading. The business that serves alcohol is responsible for that. It has to be a licensed caterer. We are renting the facility out then a caterer comes in and has to be licensed for them to serve alcohol. John Shea said working with the neighbors is most important here. Mr. Bodian said the zoning code says noise is allowed between 6 and 11 at 65 decibels at the corners of the property. We need to meet the noise ordinance. He said that is definitely doable. Going through this summer was a learning curve. In the valley of the property, noise echoes. We could allow the ceremony outdoors but limit night time receptions to the barn. We can look at speaker wattage and resistance of speakers. We believe we can operate within the boundaries of the law. The code does have a whole list of things but does not address renting. Hearing no further public comment, Mr. Zemke motioned to close the public hearing. Mr. Otter seconded. All aye. Motion carried 4-0.

Mr. Zemke said he looked in the zoning law. Our zoning law states if a use is not in the schedule of uses, it is not allowed. He said he could not find anything. Town Law mentions operating permits for over 1,000 people but that does not apply here. He looked at the ag law which grants farms different rights but could not find this use mentioned there. He said he could not find anything to support this use in that zone at this particular point in time. Mr. Otter agreed. Mr. Zemke said it is beneficial to take advantage of tourism and there are a number of places in the area but they are vetted by the town they are in with permits, such as Greigg Farms. We are here regarding the Cease and Desist dated September 16, 2013

sent by the building inspector to this property owner. Mr. Zemke read the Cease and Desist. Mr. Zemke said much to my dismay as we do need to be supporting farms, our zoning law does not address this to allow this to continue. Mr. Schneider agreed with Mr. Zemke and said he spent two hours reading the book trying to find something but did not find anything. He said a concern to him is the noise and disruption to resident homeowners that have been living in that area for quite awhile. He said he too would like to support businesses in Milan and wishes a compromise could be found but it is difficult to limit noise. Mr. Zemke said this location is not an approved place of assembly in terms of life safety code. There is no emergency lighting, no exit lighting, the stairs are not conforming. It would have to be approved with improvements and meet the building code for a place of assembly. One of the reasons for having a commercial enterprise with permits is to provide an overview from agencies to inspections. In this case, it has not happened. Mr. Otter agreed. Mr. Zemke said the owner has options – possible seek a use variance or ask the town board to review the zoning law to see if this use can be fit in. Right now, under this board’s purview, it does not fit within the code. Mr. Schneider agreed and said our main intent is to interpret the rules in the book and this is not in the book. Mr. Zemke suggested the property owner may want to seek the advice of a land use attorney.

Chairman Mancini motioned that the Zoning Board of Appeals approve the following resolution: BE IT RESOLVED, the ZBA has received an application dated September 24, 2013 for a Request for Interpretation on a Cease and Desist Order issued by the Town of Milan Code Enforcement Officer on September 16, 2013 which states “there are no provisions in the Town of Milan Code which allows this type of activity in zoning district A3A; WHEREAS,

- The property is located at 166 Milan Hill Road, tax parcel number 6472-00-875130, and is owned by Rufflands, LLC; and
- The property is located in the A3A zoning district and consists of 262.2 acres; and
- The house and property are rented out by the owner to be used as a venue for public events, including weddings. The people renting the property hire their own caterers, musicians, and any rentals that may be required such as tents, tables, chairs, etc. ; and
- A public hearing was held on November 20, 2013 where members of the public spoke in support and opposition of this use and their comments can be found in the minutes of this meeting.

NOW, THEREFORE, BE IT RESOLVED, after careful consideration of Table A, Schedule of Use Regulations, in the Town of Milan Zoning Code, the Zoning Board of Appeals has determined that this is not an allowed use in the Town of Milan and upholds the Cease and Desist order issued by the Town of Milan Code Enforcement Officer which states that there are no provisions in the Town of Milan Code which allow this type of activity. Seconded by Mr. Otter. Motion carried 4-0.

**Approval of Minutes:**

- Mr. Zemke motioned that the ZBA accept the minutes of October 23, 2013 as presented. Mr. Otter seconded. Motion carried 4 -0.

**Discussion Items:**

1. 2014 Calendar - Mr. Zemke motioned to approve the 2014 meeting dates as presented. Mr. Otter seconded. All aye. Motion carried 4-0.
2. Agenda Layout – There was a discussion as to whether applications should go before public hearings on the agenda. The Board agreed to leave the agenda as it has been in the past, with the public hearings going first in consideration of people who come out to speak.

Mr. Schneider motioned to adjourn the meeting at 8:40 p.m. Mr. Zemke seconded. All aye. Motion carried 4-0.

The next meeting will be held on Wednesday, December 18, 2013 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk  
Planning and Zoning

cc: Catherine Gill, Town Clerk  
Town Board