

TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, March 2, 2011, AT 7:00 P.M. AT THE DOVER TOWN HALL:

PRESENT: Member George Wittman
Member Henry Williams
Member Debra Kaufman
Member Anthony Fusco

ABSENT: Chair Marilyn Van Millon

Also in attendance was Secretary to the Board, Maria O’Leary, and Attorney Thomas Jacobellis.

Acting Chair Member Wittman called the meeting to order at 7:00 p.m. and began with the Pledge of Allegiance. He then stated that he is filling in for Chair Marilyn Van Millon for the night and we’re going to skip to item 3 on the Agenda, which is **Putnam Steel, Inc., Z 2011-001** - The applicant seeks to appeal Section 145-41(B)(2)(a) of the Town of Dover Zoning Law to permit the increase of the area occupied by the home occupation to the size of the existing structure built for same under an approved site plan from August 5, 1999.

In attendance for the application was Theresa Ryan of Insight Engineers, Attorney Timothy Curtiss and Don Walsh.

Member Wittman: A \$100 escrow has already been paid and this has been referred to Dutchess County Planning as required.

MOTION: Member Kaufman motioned to open the public hearing; seconded by Member Fusco.

VOTE: Chair Van Millon – Absent
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Theresa. Ryan: I represent the owner, 486 Route 55, LLC, for an application for a variance. The owner’s property contains 15 acres and is located at 6584 Route 55. The property has one access with a paved DOT apron that splits off into three gravel driveways. One driveway serves an adjoining residence through an access easement, which is the closest resident to the operation. One driveway accesses a one-story log cabin, a residence, and one driveway access is an existing metal 11,000 square foot commercial building. The commercial building also contains a significant amount of gravel surrounding it, which was used for maneuvering, loading, parking and access. All the existing facilities were constructed shortly after site plan approval from the Town of Dover Planning Board in 1999. It was approved for a home occupation, at the time the commercial part of the home occupation did not have a size restriction. The log cabin was partially built, and the commercial building was completely built. The operation went into effect without the log cabin ever being completed or occupied; that was NorthWest Firewood. Since then, the operation was abandoned and the current owner assumed the mortgage on the property

and for the last two or three years has been pursuing a potential buyer for the property. They have also made some repairs to the septic system, they have completed the residence, they have gotten compliance from the health department and they have gotten Certificates of Occupancy for both structures.

Putnam Steel is the current potential purchaser of the property; they are also the applicant in front of the Planning Board. They would like to continue the use of the existing structures without any changes to them. The only improvement they would like to make is a small gravel area behind the building; they would just like to expand it a little more to accommodate some tractor trailers and Rob Nelson, the owner of Putnam Steel, intends to occupy the existing residence.

I also have with me tonight Tim Curtiss, who is the applicant's attorney, Rob Nelson, President of Putnam Steel, Margery Mill, who is the realtor who has been trying to find a potential buyer for the property, she represents the owner and Don Walsh, who also represents the owner.

Don Walsh: I am the planning consultant who works for the pension plan that owns the building now. The brief history is that NorthWest Firewood ran into a problem with its existing bank, Putnam Savings Bank. Putnam Savings foreclosed on that site, the pension plan that I work for was the equipment lender being they came behind the bank itself. As a course of their negotiations with the bank after NorthWest Firewood slipped off in the night, the banks position was sold to the pension plan; otherwise the pension plan would have been wiped out. The pension plan took over the site and I was sent up there roughly 3 ½ years ago. When I got up there, I met Tom Hearn, Building Inspector at the time, and he and I went to the site together; we had known each other for many years and he and I both realized that the house itself was never completed.

As a result of that, there was an existing violation and nothing could be done with the site until the house was completed; that obviously had been a burden to the lender, but the house was completed, we appeared in front of the Planning Board in 2007 to get some guidance from them on how the site plan was set up, then applied for a building permit to finish the house because the building permit expired. We finished the house then went through a procedure with the Department of Health of Dutchess County to get the septic systems for both the house and the commercial building approved and then gets approval with the Department of Transportation to get the driveway and the driveway cuts approved.

All that happened and then the property was listed with realtors. Margery Mill with Ferris eventually bought in the applicant Rob Nelson to the site and he was the first person who more or less met the criteria that we had spoken of at the Planning Board and with Mr. Hearn and this criteria is having a business on the site that is less intensive than the existing business of a sawmill that had been there. Having someone from the business that was interested in occupying the residence, and we did look into a couple of different alternatives, we looked into seeing if anything could be done with the building itself in terms of moving it, it's nearly impossible, it's a solid 6' D pad with girders around it, we priced out what it was worth to scrap and was it worth ¼ of our own loan, we then put the money into finishing the house and do the rest of the compliance work. The history of the next couple of years, Margery was trying to come up with a letter to summarize this and we put that before the Board.

Realtor Margery Mill read the attached letter into the minutes.

Attorney Curtiss: I represent the applicant and I have sent up to the Board just for your review a memorandum of law just to address the legal points. I don't know if any of you Board members have questions about that. What we did was we tried to set forth the statutory criteria for the area variance, the five factors and we fit it into that, but more importantly, I think what the applicant would like to emphasize to the Board is that they are a local operation. Rob has been in business in Putnam County down in Brewster for probably 25 – 30 years and as it turns out, Mr. Ward who is the adjacent property owner, works for Champion Tile, so they were neighbors at that industrial site for years and he's well aware of the operation. We did reach out to him and he doesn't have any objection, which I put in the Memorandum of Law so you would know that.

The operation that is being proposed is really self-contained, it doesn't have much of the intensity that the logging company had. For ornamental steel, they will get a delivery or two per week, they'll send out a couple of deliveries hopefully if the market turns around and contractors are ordering railings and things like that, but they do need a site because where they are, they are in two separate sites; they have an office in Patterson and the plant is in the Brewster Office Park so they would like to consolidate the operation to one building.

We've asked the Planning Board simply for expansion of the parking for employees, but other than that, there's no other change in the site that is being proposed. The owners have been very diligent in trying to get the site up to speed and get all the approvals that are required by the Planning Board. We understand there were problems with the site with the previous owner. We're well aware of the fact that he did not use the house as a home occupation and apparently it remained unfinished for a number of years. Rob has committed and has made it very clear to the Planning Board that he intends to live there and will be on site to make sure that the site remains a home occupation.

There isn't going to be any essential change to the neighborhood since this exists. There are no environmental factors, there are no toxic materials, there's no storage, and they actually process their own scrap. Any scrap metal that they have from the steel, they take off site themselves because obviously there's a market for that so the only refuse that the site is going to create is household garbage from the residence and whatever lunch or meal wrappings come from the employees, otherwise, there is nothing coming off site in terms of industrial use of the property.

It's not going to create any environmental hazards, there are no toxic materials used in the welding or the preparation of steel. They are going to have a couple of drills outside which we've talked to with the Planning Board in case they have to ship steel back and forth. Most of the steel is going to be stored inside. They do have two small fifth-wheel pick-up trucks with the welders on the back; they will also be installed inside, those go to the job sites that actually do the construction and the fabrication of the railings as they put them in at that point.

For our application, there really hasn't been much interest in this site, and as Don pointed out, I don't think they could even take the building down because it's a six foot pad, it's above the building and they wouldn't be able to recoup anything on the property. We are

here because the Code changed. When this site was originally put in, it was lawful, it complied with the Code, they changed the bulk requirements in the ordinance I guess in 2007, which made this pre-existing, nonconforming. There was a note on the site plan originally that if the use changed, we would had to come back for an amended site plan approval before the Planning Board. We did go back to the Planning Board; they were the ones who alerted us that we had to come before your Board for a variance because of the change in the ordinance, but for that, we would be lawful.

We're not requiring any area variances, side yard setbacks, front yard setbacks, any of that, we're just requesting the variance for the bulk requirement. Theresa was kind enough to give me the dimensions of the property because we thought about a possible subdivision; we really can't subdivide it because of a frontage issue which she's put in the application and I put in my memorandum; you only have about 400' of frontage on the road, and 300' is required. If we did try to subdivide it, not only would we be creating another driveway entrance at that point we would be back in front of you for two variances, so we figured this would be the more economical way to go.

If the Board has any questions, we would be happy to answer them either with regard to the project, Theresa can do that, or if you have any questions in regard to the legal issue we would be happy to answer that.

I believe the large steel building was completed was after the original site plan in 1999 or 2000.

Don Walsh: There were two separate CO's issued for the building. The first was issued in 1999 when the building itself was completed. Subsequent to that, there was a structural fire in the rear of the building that is the portion against the back hill. Mr. Hearn required the then owner to bring in a structural engineer to review the building and he did so and after the inspections were done, the building was cleaned up and they were issued a second CO, and I believe that was in 2003.

When we went to the Planning Board in 2007, the record had been lost in Town, we got a structural engineer again to double-check the building, that time we found both structural engineer reports and they indicated it was fine, and that was 2007; the first CO was in 1999, the second was in 2003, but there was no real work done in 2003 except the replacement of one girder and repainting of the inside where the fire had been.

Member Wittman: The building that was completed in 1999, there was a CO issued under the previous zoning?

Don Walsh: Yes, and there was also a different document, which honestly I have never seen before in the Town, but a Mill Permit was issued by the Town to allow the sawmill to open. It was an overriding permit that came out of the Department, it was issued by Mr. Hearn and then it was renewed on several occasions over the next few years. It was 2007 that when they had the financial issue and I first came up and asked Mr. Hearn to go with me, that he decided then, quite correctly, that there was no house so he couldn't reissue another Mill Permit.

Member Wittman: Had the house been started back when the large steel building was put up in 1999?

Don Walsh: It's tough to tell exactly when it was started. It's on our drawing when we did the loan, which was 2003, but only shows the footprint, so looking at it, it looks like it was done over a period of time. When we went there, the walls were up, the roof was on, there were no systems in the house, there was no plumbing, heating or electrical. There were no windows in the back, the fireplace which is a huge two-story fireplace inside stone was half finished, but it needed an awful lot of interior finishing, it needed a kitchen, bathrooms, etc.

Member Wittman: What Ms. Mill read, I'm a little confused as to how many CO's were issued on the property. There was one that was issued for the steel building, but the house was not constructed, which I understand that in order to be a home business, it goes hand-in-hand, so there was no CO issued for the house and yet there was a CO issued for the building and later on, I believe, there were two CO's issued, I believe, in 2009?

Don Walsh: The one for the house was recently issued. I agree with you 100% because that was the first thing I said, the first thing Mr. Hearn said, I couldn't understand it either, but I wasn't here.

Member Wittman: And to further complicate that, now there were supposed to be septic systems which the Department of Health would have to review before you can get a CO and yet we had a CO for the building without an approval for a septic system, maybe there was one in there, but there was no approval.

Don Walsh: Let me back up just a little. Dutchess County had a septic approval for the main building, however, when we dug into the ground, it was obvious to ourselves and engineer Richard Williams of Insight, that even if that approval existed on the septic system, it wasn't a proper septic system, so that's why we dug it up and basically did it again under Mr. Williams' guidance and then at the same time did the septic system for the house fresh because it hadn't been done. Then we went to Dutchess County and they checked and then we went to the Building Department and Mr. Hearn was able to issue a Certificate of Occupancy for the house, but he needed two separate things. He needed the DOH from the County and the DOT from the State before he would look at it. And that was pretty much the list he and I had done in 2007.

In 2007 when I made my first report to the plan, I said, "walk away". I didn't know what else to do; I was just thinking of finishing the house and what they had already spent was sent to the bank, and this was before the crash, I didn't know the market values were going to go down and that has nothing to do with this application. The pension plan is a plan that was formed by a number of contracting firms basically for the benefit of other small businesses and they didn't want to see this die, so they put the money into it.

Member Wittman: The septic system that exists now for both the house and the steel building, both of them have Department of Health approval and both buildings currently have a CO that was issued by the Building Inspector. The septic system for the large building, I understand that there is going to be approximately 14 employees, is the septic system sized for that number of employees?

Don Walsh: Yes, the original number of employees in there when it was NorthWest Firewood was listed as five. But from the two times that I was up there when they were operational, the woodcutting staff alone was over ten, so it appeared to me that the numbers were pretty much the same. We have tested it and have brought Mr. Williams in to make absolutely certain that there wasn't an issue with that and Dutchess County agreed with that, so I'm convinced right now that we're in good shape with both systems. I was nervous at first because I thought it was all on one system, I couldn't figure out how that was going to go from the house up to the field for the building.

Member Wittman: Member Williams and I were up there. The Chair, Marilyn Van Millon, and the other two members have not seen it and what we would like to do is have the secretary contact someone to arrange so that they can see it. I would like to go back myself; we can only go two at a time, otherwise, it becomes a meeting. The public hearing is still open, it will be held open until the next meeting, and hopefully by that time we will have a full Board and we will entertain any other public comments in the interim, either written or at the next meeting.

Attorney Curtiss: The current owner of the property now is a single entity, which means that when the pension plan took over the property they put in a new corporation, but it is a corporation that's strictly owned by a funding system.

Mr. Nelson is not the current owner, but a contract vendee; they are in contract to buy.

Attorney Jacobellis: This is a referral from the Planning Board. The Planning Board did not make a SEQRA determination. We're doing this as an uncoordinated review so before this Board closes the public hearing, once it's time to make a determination, the Board is going to have to make its own SEQRA determination.

Member Wittman: We will make that determination prior to taking any action.

Mr. Walsh: Theresa has already filed the documentation for your review.

Member Wittman: I don't think we're going to have any objection to having a coordinated review; we usually do that with the Planning Board.

Attorney Curtiss: Just procedurally, do you open that up to the public if there is anybody here that wants to speak.

Member Wittman: Yes, if anybody wants to speak, they certainly have the right to speak on this topic.

OTHER MATTERS - MOTION TO KEEP THE MONTHLY ZBA MEETINGS the 1st Wednesday of each month starting at 7:00 p.m. with an application submission deadline of three weeks prior to the regular meeting.

MOTION: Member Fusco motioned to keep the monthly ZBA meetings on the 1st Wednesday of each month starting at 7:00 p.m. with an application submission deadline of three weeks prior to the regular meeting; seconded by Member Williams.

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VOTE: Chair Van Millon – Absent
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

MOTION: Member Kaufman motioned to approve the December 8, 2010 minutes; seconded by Member Fusco.

VOTE: Chair Van Millon – Absent
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

MOTION: Member Kaufman motioned to adjourn the meeting at 7:40 p.m.; seconded by Member Williams.

VOTE: Chair Van Millon – Absent
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Meeting adjourned at 7:40 p.m.

Respectfully submitted by:

Maria O'Leary
Secretary to the Zoning Board of Appeals