

**TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, April 6, 2011, AT 7:00 P.M. AT THE DOVER TOWN HALL:**

**PRESENT:** Chair Marilyn Van Millon  
Member George Wittman  
Member Henry Williams  
Member Debra Kaufman  
Member Anthony Fusco

Also in attendance was Secretary to the Board, Maria O'Leary, and Attorney Thomas Jacobellis for the Putnam Steel application and Attorney Michael Liguori for the Gast application.

Chair Van Millon called the meeting to order at 7:05 p.m. and began with the Pledge of Allegiance. She stated that this meeting is live and then read the first item on the agenda as follows:

**Continued Public Hearing - 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. This property is located at 6584 Route 55 on tax map #7160-00-451311 in the RU district.

In attendance for the application were Don Walsh of Development Strategies Company and Theresa Ryan of Insight Engineers.

Theresa Ryan was sworn in. Most of the Board members did a site walk on the property and I just wanted to summarize what we've gone through so far. We have already resolved the fact that the site was approved for a home occupation on August 5, 1999; the site plan approval required that if any changes of use were made to the property we would have to go back for an amended site plan. We came to the Planning Board two or three years ago and at that time they said we need to bring the site up to speed because the house wasn't finished and needed a Certificate of Occupancy. There were some septic system issues and they wanted engineering on the Butler Building (we call it the Butler Building because that's a product name, but basically it's a metal structure building). We came back after the owner finished the house, repaired the septic systems, closed out the outside agency approvals which were DOT and Health Department and then received Certificates of Occupancy (CO) for the house and a second CO for the Butler Building.

The reason we're here tonight is to request a variance for the approved home occupation. At the time that it was approved, there were no restrictions on the size of the accessory building that was associated with the residence. Since then, the Zoning has changed and now it's supposed to be a fraction of the size of the existing residence. Now that the building is already there, it would be cost prohibitive to remove the building. The owners have found a user for the property that fits the definition of home occupation through your

Code and the only reason we're here is because the zoning changed and now the building exceeds the percentage that's required for the accessory building.

Chair Van Millon: I was looking back over the past zoning laws. They had home occupation back then and at that time it was 25% or 30% of the size of the house from March 1987 and it was amended in 1997.

Attorney Jacobellis: I know there was Local Law #1 of 1997 which was an amendment to the Dover Zoning Law, which at that point limited, I believe, the size of the accessory structure for home occupation to 30% of the floor space of the primary structure.

Chair Van Millon: I'm looking at March 19, 1987 which said 25%.

Member Wittman: And later it changed to 30%.

Chair Van Millon: At that time there was a percentage of the size of the building.

Attorney Jacobellis: It appears that at least in 1997 the limit was 30%; under the current Code, it's 40% or 2,000 square feet, whichever is lesser.

Theresa Ryan: The site plan approval didn't restrict the size of the building at that time and it was built in accordance with the site plan.

Chair Van Millon: Is there anyone else who would like to address this issue?

Don Walsh was sworn in. We're the company that was hired by the pension plan that unfortunately had to foreclose on this. It was Putnam Savings Bank that originally foreclosed; the pension plan were the lenders on the personal property and the inventory and they were wiped out and the bank's foreclosure took over the position in agreement with the bank. The long and short of it is they ended up with the site and when Theresa refers to us coming here three years ago, we didn't come to this Board, but we certainly came to the Town because I was sent up for the first time to find out what the situation was. I went with Tom Hearn, whom I've known from White Plains many years ago when he was at Home Savings Bank of New York doing Code work, we both took a look at the house and said the house isn't finished, and that's why it went to the Planning Board. I explain what happened then, I was here, I don't know. But no matter what happened it was clearly an unfinished house and had to be finished before anything could be done there and we spent a year and change doing that.

The property was listed with a couple of local realtors after that because obviously the pension plan is not in business of running properties and not in the business of building houses, either. Margery Mill is here tonight and testified at the last hearing describing the practical difficulties involved in finding an owner who could actually live there as well as run a business from there and the most difficult thing was finding someone just like that. We did have a lot of interest from Hunt Country Furniture; folks came up there, looked at the site but they weren't interested in the house. The bus company did the same thing, the truck yard people down on 22, everybody liked the structure, but didn't want the house. The problem we had was trying to find out who the right owner would be because we had been advised by the Planning Board that we should find something that is of a lesser impact than

the retail use that was there and the loud noise from the compressor from the saw mill. You've never had a noise complaint, there's never been one on file because we FOIL'ed the file and Tom and I went through the whole thing three years ago, but that was still a question in the back of the planner's minds so when we gave Margery the mandate to find someone here, she had to look very carefully because it had to be something under our standards and minimize the traffic, not a retail component if possible. Unlike Hunt Country Furniture and Webatuck Craft Village, Putnam Steel is a wholesaler and they do business with contractors and they live here in the Town of Dover. Most of the folks here tonight, incidentally, are here because when the Board visited the site, they got in a conversation and these gentlemen, they're all Dover residents, and they would like to work in their own town; they all commute right now to Brewster. The folks that are here are the folks that do the custom crafting, the custom chandeliers that are made there.

Right now, I'm only addressing this to you, Miss Chair, because you weren't here at the last meeting and I want to make sure that you know what we covered. We covered this in such a way that we think this is a user that we believe would work and we didn't want to come back to the Town until we had somebody that would be worth considering. I'm not asking you to approve it on that basis, you have to approve it on your own basis, but I am asking you to consider this favorably on the light of it's an incredibly difficult process to find the right person who wants to live and work there and has a lesser impact and we accepted Margery's original client and we've gone to this extent here.

My job at the site was to clean it; I spent two years getting rid of 18,000 cubic yards of wood on the hill and 22,000 down below and we got everything off the site except for one small pile of logs which is still there. The rest of it has been done, the site is now pristine, we have a couple of our trucks there because we use it as a central site, we have one in Connecticut and one in Wappinger so this is in between. Without this buyer, the bank would be stuck with this asset, so we're asking for a favorable consideration. Only one question for this Board, can they use the entire building? It's in your law and the way your law is done, even though it was approved by the site plan, the CO's were issued, the original saw mill was allowed to be there, right now a new successor business of any sort can't use the whole building without this Board saying yes.

Chair Van Millon: Even though I wasn't at the last meeting, I did watch it; I do review. Is there anyone else who would like to address the Board on this issue?

Felipe Castro was sworn in. When a couple of you came to the shop, we showed you the stuff that we did and we also let you know that we do live in this town and a lot of us own houses in this town. My father who works with me has been living in Dover for 20 years. I have my friend working with me, I graduated High School with him and recently I just bought a house in Dover, too. We're not a business who is looking to do damage to the Town; we're looking to move closer and it would be really nice to have the shop close to the house. A lot of you have seen what we do and if you want to see more, we can show you.

Chair Van Millon asked if there was anyone else who would like to address the Board; there were not.

Member Wittman: Our consideration here is considering this whole thing. I certainly think the business that Putnam Steel does may be a real asset to our Town but I have a problem

with putting it in this particular area. My way of thinking is that this does not fit the bill for a home business, home occupation. We're looking at different examples in the zoning, it's clearly for something that's incidental to primary purpose to the property, which is residential. Things like hairdressing, medical office, professional office for a lawyer, engineer, architecture, things like that. What we're talking about here, although it's certainly not an offensive type of business, is still a manufacturing business which probably belongs in a commercial or an industrial zone.

The other problem I have with the property is that I don't see that it ever really was running as a home occupation. If you read the zoning, you can't have a home occupation unless you have a home that's occupied, and it's never been occupied, it has only been finished recently. Why it was operating incorrectly, shall we say, for all of those years, I really don't know. Why they permitted a 10,000 square foot plus building to be put on the property with no home constructed first, or even put it in after the home was constructed, I don't know. In my mind there's no prior existing nonconforming rights here; it was never operated correctly as a home occupation, it's been out of operation of the firewood business for several years at least and we have a change in use. What we're considering here is really a whole new application as to whether we can permit a 10,500 square foot building and 14 or so employees as a home occupation, which to my way of thinking doesn't fit at all, and I have a real problem with it.

Don Walsh: Neither of us were here when they gave those permissions and I'm fully aware that there's no such thing as municipal stopple, but when the pension plan made the loan, when Putnam Savings Bank made the loan, I did look at the Putnam Savings Bank papers, in both cases they're backed up by letters from the Town that the sawmill was the proper use of the property and was permitted by site plan signed by the Town and they allowed it to be built under those circumstances, no questions. Mr. Hearn and I both saw the fact that the house wasn't finished at that time, that's why the mill permit was not renewed, that was in 2007. Unfortunately, the pension plan ended up with the property, but they had no other way of doing it, they would have lost a lot of money and had to spend the money to finish the house and then to finish the septic and then to deal with the DOT and the DOH and all of that was done. During all that time, the pension plan has been paying the \$40,000 a year in property taxes even though there was an enormous loss to the plan. It's been three years, we've been trying to do absolutely everything the Town wanted and at this point in time, to the very best we can, we've done that.

This may not meet your exact criteria, it didn't meet mine either in the beginning. A lot of these folks know me from my years of working in municipalities for the Town, not working on this side, and I didn't know how to resolve that so I tried Margery and we really needed someone who can actually be there and be part of this community, live in the house and run the business from it, it's the best they can possibly do, the cost of taking the building down was over half a million dollars, there's no way we can do that, they would have lost their entire investment. It is a pension plan, it's a small pension plan, it's a construction company that was set up to finance things like this after 911 when many of the small companies went out of existence, that's why they're here. There's stuff here and stuff at another site in eastern Dutchess County where there's similar zoning issues, things that came up, things that changed after the fact. In the other town, they also have to go before Zoning for whatever user they had, over there they have a cable TV company occupying the site, it doesn't quite meet all the criteria and the site's too large under their law today for this kind

of a company. We ask the Board to consider this is a buyer that was searched for sedulously, this is a site that we did absolutely everything we possibly, we followed every piece of guidance we got from the Town from the planners, the attorney, from the Planning Board and we're asking you to consider not so much perhaps a use issue that's going to come in the course of environmental review by the Planning Board going on, but really the one issue that's going on here is do we have to keep the building vacant forever. I don't think that's really right, especially for what we're doing in terms of taxes and everything else on the site.

Theresa Ryan: I think that another problem is also that I know that home occupations typically as you said are hairdressers and doctors and dentists, that type of thing, and this building is already there, it's already 10,000 square feet, and I think it would be a very difficult task to find a hairdresser to live in that house and use that building for a business like that, it's really not suitable for that and Putnam Steel could make use of the entire building and keep the noise levels down and keep the traffic down and one of the corporate officers would be living in that house, so it would fit the current definition better than other typical home occupations.

Member Wittman: One of the things we do, of course, is when the Zoning Law is written, they can't foresee all of the possible things that would come up in the future, and that's why we have a Zoning Board of Appeals. The way I see the Zoning Board of Appeals, and I've said this to other applicants, is that we tweak the zoning a little bit if necessary; this is not tweaking, this is rezoning. That's not our department, that's the elected officials, that's the Town Board. That's why I have a problem with it, I understand your problem, and I understand it's there, but the problem is that this sets a precedence for the type of use and the size of the building and the size of the accessory building that can be used in that particular type of zone. I don't see that it's our Board's right or duty to re-do the zoning. If and when the zoning is done and they change that to perhaps a commercial zone, then it's a whole different ballgame, but for the reasons I've stated, I just don't like this at all. The building's there, that's a fact, why it's there, I really don't know and I've read all of this stuff dating back into the 80's all the way up to the present on this and I really don't understand why a lot of this stuff was permitted. It certainly wasn't permitted under the zoning.

Attorney Jacobellis: I've reviewed as far back as I can go and as Mr. Walsh said, there's no such thing as municipal estoppel. There's no doubt to me that the original Certificate of Occupancy was issued in error without the residential structure being completed and a principal living in that structure. It even appears to me that there may have been regulations at the time on the size of the building that were maybe not adhered to when the site plan was approved. I haven't seen anything that did not limit the building; there were laws in '87, in '97 that limited the size, I haven't found anything between then and the time the site plan was approved that repealed that law, but it could be there, I haven't found it. That being aside, the applicant basically took the property by foreclosure, they didn't build the structure, so it's not a self-imposed hardship in that sense; however, the Board is not bound by the CO or any site plan approvals, it has to base this application on the current zoning code, there is no pre-existing, non-conforming use, any prior use by the wood operations long ago have been abandoned and this Board has to base its decision on the criteria of an area variance and compare the applicant's request to the current Zoning Law.

Theresa Ryan: I think the first time, from the time that the firewood operation ended and the time that we ended up here, the applicant did go back to the Planning Board about a month or so after the firewood business ended, that's when the Planning Board told the owner/applicant to find a user for the property and they had to finish the house, but they did try to make an application for the property in a short amount of time after that.

Member Wittman: I'm still wondering why, even at that point, the Planning Board didn't send you to us for a variance before you finished the house.

Don Walsh: The Planning Board didn't send us here and we did talk about that; we had no user, there was no way we could have put a site plan in under your town's requirements because we needed a parking calculation, we didn't have any idea. All we know is that we were here, we worked out a deal with Putnam Savings Bank and everybody was looking at each other and saying what are we going to do with this and we came to the Planning Board first. No user meant we couldn't apply to you because I didn't have anything to tell you, but here we do have a user, Rob Nelson, who will be occupying the house if permission given by the Town. That's not just permission from this Board, it's also with permission from the Planning Board after this Board reviews if we can use the building itself, the building that was built in accordance with the site plan. It took two years, there's a lot of time put into that, they did extensive grading plans, septic plans, they did everything. I don't know why everything was signed in the order it was, I wasn't here then. I hadn't been in the Town since Camp Siwanoy was closed a couple of years before that, I just didn't know what happened, and I went back and read the entire record with Tim Curtiss, who is our attorney. It just said that it was an extensive review and in the end the Town agreed to this; not only did they issue one CO, but they issued two; they re-approved it again after a second look at it. Should they have done that, I can't tell you that because I don't know what they were thinking then, but what I can tell you is that we have a site, we've done absolutely everything we possibly can on bringing it into compliance and it is now in compliance, we have all of our CO's. Our realtor has found someone who meets the criteria there and it's not only a criteria that's a Dover based criteria, it's a criteria for some folks in Dover who are interested in this, so I ask the Board to favorably to consider that application.

**MOTION:** Member Wittman motioned to close the public hearing; seconded by Member Williams.

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

Member Fusco – Aye  
Member Williams – Aye

Chair Van Millon: We have 62 days to make our decision.

Attorney Jacobellis: With guidance from the Board, I can prepare a resolution either for the next meeting or the proceeding meeting.

Theresa Ryan: We would also like to know if the Board is willing to address SEQRA at this time.

Attorney Jacobellis: The Board is going to have to make a SEQRA determination before they take an actual rule when they make a determination.

Theresa Ryan: It is my understanding that if it's a Type II action, then no further SEQRA review is required.

Attorney Jacobellis: In my legal opinion, this would be a Type II action, everything there is existing. This is going back to the Planning Board, but to try to expedite the process, I believe I got a memo from Victoria Polidoro, the attorney for the Planning Board that they did not do a SEQRA review, it was an uncoordinated review. Whether we grant or deny this, we will have to make a SEQRA determination, but I do agree that it's a Type II action.

Don Walsh: Can you make the Type II determination this evening so you can go on to consider the next portion of it?

Attorney Jacobellis: I have no objection if anyone on the Board wants to make a motion.

**MOTION:** Member Wittman motioned to declare this application a Type II action under SEQRA; therefore, no further environmental review is required; seconded by Member Fusco.

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

Member Fusco – Aye  
Member Williams – Aye

Chair Van Millon read the next item on the Agenda as follows:

**Public Hearing - GAST** – Z 2011-002 – The applicant seeks to appeal Section 145-11(B) of the Town of Dover Zoning Law to erect a pole barn on his property without meeting the 30' side yard setback. This property is located at 87 Dover Furnace Road on tax map #7061-00-485405 in the RU district.

In attendance was the applicant and property owner, Daryn Gast.

**MOTION:** Member Wittman motioned to open the public hearing; seconded by Member Williams.

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

Member Fusco – Aye  
Member Williams – Aye

Daryn Gast was sworn in. Basically, I want to put up a pole barn that's going to be 15' closer to my neighbor's property if I'm granted to do so. The reason for that is just because of the lay of the land and it's the only place I can put the building. If I put it over any further, the grade is so great that it would require a tremendous amount of fill. I have a letter from my neighbor that I received yesterday.

All neighbors were notified.

Chair Van Millon read the letter from Wayne Vincent dated 4/5/11 for the record stating that he has no objection. Prior to Mr. Gast putting in his application, he called me at home and I

advised him to speak to Maria (ZBA Secretary) and the Code Enforcement Officer because he had violations on his property. Those violations have since been rectified.

Attorney Liguori: I reviewed this application and this property is in the Stream Corridor Overlay District. Inclusion in the district depends on the distance between the proposed structure and the high mean water line for the Swamp River. We have an interesting section of our Code that says that if you construct a structure greater than 500 square feet in the Stream Corridor Overlay District, it triggers site plan approval, but there's exclusion.

Daryn Gast: It's going to be about 68 to 70' from the water and I measured it when the water was up.

Attorney Liguori: I advised the ZBA that based on the maps that were delivered with the application, that it triggers the requirement of the Stream Corridor Overlay. One of the requirements is if you propose a structure greater than 500 square feet, then you trigger site plan approval and that would be an approval by the Planning Board. But we have a provision in that law that says, and this is what's interesting about it, says if a special permit, site plan, variance or subdivision approval, here we have a variance approval, this is required in connection with the project subject to the requirements of this section. The requirements of this section shall be considered in such proceeding and no separate site plan approval shall be required. It puts the burden on the Zoning Board of Appeals to make a determination as to whether or not the proposed project will result in erosion or stream pollution from subsurface or surface runoff. It says in making such determination, the Planning Board, in this case, is subject to the Zoning Board, shall consider slopes, drainage patterns, water entry points, soil erosivity, depth of bedrock and high water table and relevant factors. That puts you in a Planning position, but you don't really have enough information to make those determinations, so my suggestion, which is probably the most cost effective way to do it, we try to be as sensitive to the applicant's coming out of pocket, since that isn't a usual function of the Zoning Board, my recommendation is to take the application and refer it to Joe Berger, Town Engineer, and let Joe give us the recommendations that we need to include in a resolution and that's if the Board is going to grant the variance.

There are some no brainer things, installation of soil and erosion control measures, and things of that nature, but maybe Joe has got something else that we might need to consider. My recommendation is that the Board set a minimum escrow. In addition to that, we have a letter from the Building Inspector which he writes that he agrees that the accessory structure is less than the designated setback from the Stream Corridor, however after review the contours on GIS and after an inspection of the property, "it's my opinion that the proposed structure will not be in the flood danger area. The water is below 400' and the proposed structure will be above the 425' mark." Basically what Mike (Building Inspector) is saying is that he wants the Board to be aware that it's not in the flood danger. That's the river touching the building. What I want to make sure is the construction of the building doesn't impact the river; that's what the Stream Corridor protection overlay district is meant for. I had made a recommendation in my correspondence that the Board to set an escrow for Joe's time, I think that's what it would take this Board to satisfy the criteria of that section.

**MOTION:** Member Wittman motioned to set escrow for \$500; seconded by Member Kaufman.

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

Member Fusco – Aye  
Member Williams – Aye

Member Wittman: I was at the property and for those of you who were not there, the water would have to come up awfully high to get close to that building so there's not a problem with it being in the floodplain. Without being an engineer, it will probably require a silt fence and some hay bails, but we have to get past the engineering.

Attorney Liguori: I think Joe's recommendation to the Board would be what you prefer. This has already been sent to Joe Berger.

**MOTION:** Member Kaufman motioned to close the public hearing; seconded by Member Wittman.

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

Member Fusco – Aye  
Member Williams – Aye

Attorney Liguori: This is still an area variance, there's no Stream Corridor Overlay District permit, which would make it an Unlisted action; this is a Type II action, so there's no SEQRA analysis that the Board has to do.

**MOTION:** Member Kaufman motioned to approve the March 2, 2011 minutes; seconded by Member Williams.

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

Member Fusco – Aye  
Member Williams – Aye

All ZBA members would like to attend the ZBA Overview class on April 26, 2011.

**MOTION:** Member Kaufman motioned to adjourn the meeting at 7:50 p.m.; seconded by Member Fusco.

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

Member Fusco – Aye  
Member Williams – Aye

Meeting adjourned at 7:50 p.m.

Respectfully submitted by:

Maria O'Leary  
Secretary to the Zoning Board of Appeals