

**TOWN OF DOVER ZONING BOARD OF APPEALS SPECIAL MEETING HELD ON TUESDAY, FEBRUARY 20, 2008, AT 7:30 PM AT THE DOVER TOWN HALL:**

**PRESENT:** Chair Marilyn VanMillon  
Member George Wittman  
Member Anthony Fusco  
Member Rosalind Cimino

Also in attendance was Secretary to the Board, Maria O’Leary, and attorney, Victoria Polidoro of Rapport, Meyers.

Chair VanMillon called the meeting to order at 7:32 pm and began with the Pledge of Allegiance; she then read the first item on the Agenda as follows:

**CONTINUED PUBLIC HEARING: James Dwy – Z 2007-05** – The applicant seeks an interpretation of the definition of Municipal uses found in the Zoning Law of the Town of Dover Use Table and an appeal seeking a reversal/modification of the decision of the Town of Dover Code Enforcement Officer (CEO) dated May 22, 2007. The applicant requests that the Zoning Board of Appeals interpret the Use Table, and more specifically Community Use and Municipal Use and thereby determine that the use of Mr. Dwy’s property as a United States Post Office was not a “municipal” use as was determined by the CEO, but that in fact the Post Office use was a retail business, a service business, or both. This property is located on Pleasant Ridge Road (CR 21) in the HM District, Grid #7060-04-886098.

In attendance were the applicant, James Dwy, and his attorney, Lewis Stadler.

Mr. Stadler submitted a letter from Frank G. Fowler, III dated February 19, 2008, and Mr. Dwy submitted a memo with a picture to the members of the Dover Board of Appeals dated February 4, 2008 to be part of the official record. Mr. Stadler received some of the documents that he requested through FOIL from the Town Clerk, but not all; probably because it appears that they don’t exist.

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

VOTE: Chair VanMillon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Cimino – Aye

Chair VanMillon read the attached resolution.

**MOTION:** Member Wittman motioned to adopt the resolution with the two additional items submitted by Mr. Dwy and Mr. Stadler; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Cimino – Aye

RESOLUTION APPROVED.

Mr. Stadler pointed out that the Post Office referenced in Section 15 E. is on Route 22 in Wingdale, not Pleasant Ridge Road.

**MOTION:** Member Wittman motioned to adopt the revised resolution along with the two additional items submitted by Mr. Dwy and Mr. Stadler; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Cimino – Aye

REVISED RESOLUTION APPROVED.

**MOTION:** Member Fusco motioned to set the regular monthly meetings to be held on the 3<sup>rd</sup> Wednesday of each month starting at 7:00 pm instead of 7:30 pm beginning March 19, 2008; seconded by Member Wittman.

VOTE: Chair VanMillon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Cimino – Aye

**MOTION:** Member Wittman motioned to approve the January 22, 2008 minutes with the correction of the word “sub-pervious” to “superfluous” on page 8; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Cimino – Aye

**MOTION:** Member Cimino motioned to adjourn the meeting at 8:25 pm; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Cimino – Aye

Meeting adjourned at 8:25 pm.

Respectfully submitted by:

Maria O’Leary  
Secretary to the Zoning Board of Appeals

**Town of Dover**  
**ZONING BOARD OF APPEALS**  
126 East Duncan Hill Road  
Dover Plains, New York 12522  
(845) 832-6689

**RESOLUTION OF ZONING BOARD OF APPEALS**  
**DWY APPEAL AND INTERPRETATION**

**February 20, 2008**

**WHEREAS**, the applicant, James Dwy, has appealed from the May 22, 2007 determination of Code Enforcement Officer (“CEO”) Hearn, in which the CEO determined that a post office was a “municipal use” under the Dover Zoning Code, and has requested that the Zoning Board of Appeals reverse the CEO’s decision; and

**WHEREAS**, the applicant owns property located on Pleasant Ridge Road (CR 21) in the HM District, Grid # 7060-04-886098, which was formerly used as a post office, the “subject property;” and

**WHEREAS**, a public hearing on the appeal was opened on August 15, 2007 and closed on February 20, 2008, during which all those who wished to speak were heard.

**NOW THEREFORE BE IT RESOLVED** that based upon the record of the appeal the Dover Zoning Board of Appeals hereby adopts the following findings:

1. The evidence gathered during the public hearing on the appeal brought by Mr. James Dwy in August 2007 is represented in the Dwy Record on Appeal.
2. The issue raised by Mr. Dwy’s appeal is as follows: Whether the Building Inspector’s May 22, 2007 determination that the use of the Dwy Pleasant Ridge Road property (“site” or “property”) as a post office was a “municipal” use under the Dover Code is correct and should be upheld, modified or reversed. The May 22, 2007 determination is part of the Record and uses the Webster’s Ninth New Collegiate Dictionary for the definition of municipal: of or relating to the internal affairs of a major political unit (as a nation). The rest of the definition states “of, relating to, or characteristic of a municipality . . . having local self government . . . restricted to one locality.”
3. The subject property is a .52 acre lot in the HM District that is owned by Mr. Dwy and is located at 3623 Pleasant Ridge Road, Dover, New York 12594, Tax Map # 04-7060-04-886098-00.
4. Mr. Dwy states that the property is being used and is proposed to be used for retail and or service sales. The record demonstrates that the present use of the

property as a pet shop is argued to be unlawful by the Dover Building Department because such use has been made of the property without the appropriate Dover permits and approvals. It further demonstrates that construction related to the pet shop has been undertaken without the required Dover approvals and permits. See Notices of Violation and Stop Work Orders from 2002 and 2004 and letter from Mr. Stadler to the Building Inspector dated April 20, 2007 in the Dwy Record on Appeal. The Record indicates that the last lawful use of the site was as a federal post office. The above-referenced violations were never the subject of any settlement with the Town of Dover and remain outstanding.

5. The Town Assessor's files indicate that Mr. Dwy sold the property to Angelo Communale on 2-28-02 and repurchased it from Mr. Communale on 4-14-03. The Record further demonstrates that Mr. Dwy repurchased the property because Mr. Communale could not pay the mortgage as he was unable to obtain the local permits and approvals to run his business.
6. There is no definition of "municipal" in the Dover Zoning Law. However, the Use Table in the Dover Zoning Law lists a "municipal" use as a "community" use which is permitted by right with site plan review from the Planning Board. The Zoning Law does not define "community" use either.
7. Section 145-73A of the Dover Zoning Law states that  

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings.
8. Counsel for Mr. Dwy states that the word "municipal" pertains to local rather than federal government. In arguing his point, Mr. Stadler has made submissions to the ZBA that are part of the Record. Mr. Stadler has provided the ZBA with various dictionary definitions of municipal from Black's Law Dictionary, Cambridge University Press, The New Webster Encyclopedic Dictionary of the English Language, the Thorndike Barnhart Comprehensive Desk Dictionary and the American Heritage Dictionary of the English Language. The term "municipal" is consistently referred to as a local government unit in various dictionaries although it is also referred to in some of the same dictionaries in the broader sense as pertaining to national government.
9. Mr. Stadler also asserts that a post office use is more closely akin to a retail or service use.
10. Joel Russell, Town of Dover Planning Consultant and drafter of the current Zoning Law, has advised the ZBA of the following with respect to Mr. Dwy's appeal:

I have looked into your question, and my response is that the post office that used to operate on the property is not a municipal use,

nor is it a retail or service business. A municipal use means a use conducted by a unit of local government, which would normally be the Town of Dover or a local governmental entity such as a school district. The post office is a quasi-governmental use by a federal agency that would be treated the same way as any other federal facility or state institution. It is not a retail or service business as defined in the code. For zoning purposes I would consider it to be a use that, under §145-10B, "does not fit into one of the categories shown on the Use Table" and which is therefore the type of use that would be allowable by Town Board special permit (if it were not otherwise exempt from zoning as a federal agency). ~~A pet shop would be considered a change of use from an unlisted use to a different category, i.e. retail business, requiring whatever the zoning requires for a retail business in the particular zoning district (special permit or site plan review).~~

11. The Town of Dover Master Plan, adopted September 21, 1993 ("Master Plan"), was reviewed by the ZBA's legal counsel and the following references were found with respect to the type of land use a post office was characterized as in the Master Plan:

- A. In Chapter Six on page 65 of the Master Plan, a post office is described as a "community facility." It states that

Community facilities are most often administered by a governmental agency or a private not-for-profit organization. Generally, they are financed through taxation, user fees or public subscription.

Service and retail are discussed elsewhere in the Master Plan.

- B. In Chapter Eight, on page 84 of the Master Plan, it lists a post office as a public or quasi-public use. Other such uses include churches, hospitals, schools, and federal, state, county and local government. On page 110 of the Master Plan, it lists the state police, the local fire company and the elementary schools as existing "institutional" land uses. The Master Plan distinguishes these uses from the professional and services land uses discussed in the same paragraph.
- C. In Chapter Nine, on page 108 of the Master Plan, commercial development is described as providing "important benefits to the Town. It gives residents a place to take care of daily needs, provides employment, and helps give the community a focal point."

12. Pursuant to Section 272-a of the New York State Town Law ("Town Law"), a Town's land use regulations must be consistent with its master plan.

A copy of the Master Plan is part of the Record.

13. A Service Business is defined in Section 145-74 of the Code as a business or non-profit organization that provides services to the public, either on or off premises, including but not limited to building, electrical, plumbing and landscaping contracting, arts instruction or studio, automobile service station, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. "Service business" does not include retail business, restaurants, warehouses, or other uses separately listed on the Use Table.
14. A Retail Business is defined in Section 145-74 of the Code as an establishment selling goods to the general public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drugstore, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationary store, convenience store, and variety store.
15. Town records indicate that the past treatment of a post office land use has been as follows:
  - A. Old Town Planning Board minutes indicate that a post office use could potentially require subdivision approval under the old Zoning Law if land was to be divided off a parcel. This is consistent with what would be required today.
  - B. Planning Board minutes indicate that the Keller/Rennia site plan application for the Dover Village was for a post office in August 1995 under the old zoning law. The EAF for this action described the project as a "commercial building." The EAF was accepted as written by the Planning Board on August 29, 1995. The application for site plan approval also described the project as a "commercial building."
  - C. Planning Board records indicate that Keller/Rennia made a site plan and subdivision application under the old Zoning Law for the construction of a new post office in April 1998 also on Route 22 in Wingdale, New York. The post office was to replace the bank building.
  - D. The previous Dover Zoning Law listed a "post office" as a use unlike the current Zoning Law. It was also listed as a use subject to site plan approval under the prior Zoning Law. The term "municipal" use is listed separately and also required site plan approval. "Retail" and "service" uses are listed generically and specifically in the old Zoning Law as requiring site plan approval.

- E. Building Department records indicate that a December 1999 and January 2000 application for a sign was made by a post office representative for the ~~Pleasant Ridge Road~~ *Route 22, Wingdale -* Post Office. The sign was approved in January 2000.
16. Shipping stores, such as a UPS Store and Mailboxes Etc., perform many of the same functions and provide many of the same services as a post office. UPS Store locations offer a range of products and services including packaging, shipping, mailbox and postal services, passport photos, money transfers and office and mailing supplies.

Town records referenced herein are part of the Dwy Record on Appeal.

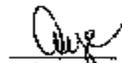
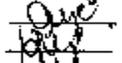
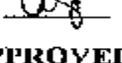
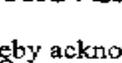
**BE IT FURTHER RESOLVED** that the Zoning Board of Appeals determines, based on the record before it, that a post office is not a "municipal" use as that term is defined in Section 145-10 of the Dover Zoning Law. The opinion of the drafter of the Town Zoning Law ("drafter") as to the legislative intent is consistent with the language in the Zoning Law and parts of the Master Plan. The drafter's intent was to use the term "municipal" to mean a use conducted by a unit of local government, which would normally be the Town of Dover or a local governmental entity such as a school district. The Board finds that this is the most reasonable interpretation of the word as used in the Code and vacates the Building Inspector's determination that the use of the property was a "municipal" use.

**BE IT FURTHER RESOLVED** that the Zoning Board of Appeals also determines, based on the record before it, that a post office is a "service business" use as defined in Section 145-73 of the Code. The Board acknowledges the drafter's contrary opinion that a post office is a quasi-governmental use by a federal agency and that it was not his intent to classify a post office as a "retail" or "service business" in the Dover Zoning Law. The Board, however, respectfully declines to adopt his opinion as its own. The current Code does not have a separate use category for a post office as the former Code did. Rather, a broad definition of "service business" was inserted into the current Code. A "service business" is defined as including, among other things, a non-profit organization which provides services to the public. This Board finds that the use classification of "post office" was not mistakenly left out of the current Code, but that the legislative body intended the new definition of "service business" to subsume the post office use category. The Board finds it relevant that a post office serves many of the same functions as a commercial shipping store, such as the UPS store, which would also be a "service business" use under the Code. Postal service is no longer an exclusive governmental function, but must compete with private for-profit shipping services. The Board therefore concludes that the subject property may be used for service businesses pursuant to Section 145-10F, and that such use shall not be considered a change in use unless it exceeds the thresholds set forth in said section.

Dated: February 20, 2008

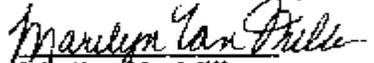
Moved By: *George W. Wetherman* Seconded By: *Sam J. Sisco*

**VOTE:**

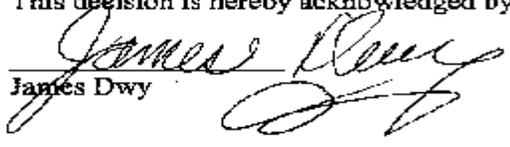
Marilyn VanMillon:   
Rosalind Cimino:   
Tony Fusco:   
George Wittman: 

**RESOLUTION APPROVED**

This decision is hereby acknowledged by Chair VanMillon:

  
Marilyn VanMillon

This decision is hereby acknowledged by the Applicant:

  
James Dwy