

July 9, 2012

TOWN OF NEW WINDSOR

ZONING BOARD

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MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN  
FRANCIS BEDETTI  
RICHARD HAMEL  
PATRICK TORPEY  
HENRY SCHEIBLE

ALSO PRESENT: GEOFFREY CHANIN, ESQ.  
ZONING BOARD ATTORNEY

NICOLE PELESHUCK,  
ZONING BOARD SECRETARY

MEETING AGENDA:

1. Hudson Valley SPCA
2. Dana Tripodo-Annacome
3. Sandra Bruce

**REGULAR MEETING:**

MR. KANE: I'd like to call the Town of New Windsor  
Zoning Board of Appeals July 9th, 2012 to order.  
Roll call please.

MR. SCHEIBLE Here  
MR. BEDETTI Here  
MR. HAMEL Here  
MR. TORPEY Here  
MR. KANE Here

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**HUDSON VALLEY SPCA (12-21)**

MR. KANE: Tonight's first public hearing Hudson 2 Valley SPCA proposed three lot subdivision and site plan. Lot number one does not meet minimum lot width, side yard setback, and total side yard setbacks. Lots two and three do meet code bulk requirements located a 940 Little Britain Road, Route 207 in an NC zone.

MR. EWALD: Good evening.

MR. KANE: When you're ready state your name and address, who you represent loud enough for that young lady over there to hear you and tell us what you want to do.

MR. EWALD: My name is Travis Ewald from Pietrzak and Pfau Engineering and surveying. We're proposing a three lot subdivision along Little Britain Road at 940 for the Hudson Valley SPCA. We'd like to create two retail lots along the front of the parcel and subdivide off the remainder of the lot of the 16.4-acre lot to facilitate the existing kennel use. For the two proposed retail lots we meet the bulk regulations, however for the lot number one which would contain the kennels we're requiring a lot width and a side yard variance along with the, I believe the total side yard variance. The variance we're requesting would only affect the proposed lot two which we are creating and obviously any purchaser of that lot would be aware of the, you know, how close the kennel use is to the lot line. The crux, and reason that we are seeking this variance is we would like to put our main entrance for the project directly across from the existing entrance which also is at the high point of the road giving it adequate sight distance in both directions.

MR. KANE: Is that a request from the State and/or the County?

MR. EWALD: I believe it was from the discussions that we've had, yes. And if you are driving along there you can see that it's the best spot for the entrance. If you go on either side of that sight distance becomes, you know, is reduced either looking at one or the other direction.

MR. KANE: So keeping that entrance from the street going with the State and County is basically the reason they're going to need a variance because we can't adjust the fronts to properly fit.

MR. EWALD: Right, that's it. And we have, from the adjacent lot which is not in our ownership you know, existing lot to the east we have, you know, required side yard setback. It's just our internal lot that we're seeking a side yard variance.

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MR. TORPEY: What's that lot being used for right now?

MR. EWALD: The lots to the east or the existing?<sup>3</sup>

MR. TORPEY: The lot you're asking for the variance for?

MR. EWALD: It's a kennel use.

MR. TORPEY: The lots a kennel use right now?

MR. EWALD: Number one.

MR. TORPEY: What about number two?

MR. EWALD: Number two is a proposed lot. It's not an existing lot. We will be seeking to put a retail use on there.

MR. TORPEY: What's on lot number 3?

MR. EWALD: Same thing.

MR. KANE: The same thing, if they break out, what's going to happen is lots two and three meet all of the requirements, if the Planning Board goes through with the subdivision of the property. So in doing that and keeping the entranceway then lot number one doesn't have the right-of-way on the road even though most of the property is in the back and spreads out.

MR. SCHEIBLE: Maybe it went passed me, I just didn't understand, on lot number two the entranceway could you point that out? I can't really understand it on the map that I have in front of me.

MR. EWALD: I brought a map with the aerial image on it.

MR. BEDETTI: One other question, was there a common entranceway, is there one entrance?

MR. SCHEIBLE: Common entranceway for two and three.

MR. BEDETTI: Or one, two and three?

MR. EWALD: I believe we will be looking to do it for one, two and three I believe. When we develop our proposed site plan for the subdivision we will be seeking to just add one common entrance for all three lots.

MR. KANE: Even better.

MR. SCHEIBLE: Because that all depends on the sight distance in that area. Now there's that little going up and down there. The sight distance is what I'm worried about that's why I brought that up.

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MR. EWALD: Where we are proposing to go, put the access for it?

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MR. SCHEIBLE: Yes.

MR. EWALD: Is right at the crest of the hill so it will have the best sight distance you can have along that road frontage. And it's directly across from the other existing entrance that's out there.

MR. TORPEY: Lot two and three are just empty lots?

MR. EWALD: They haven't been creating, we are proposing to create those, correct.

MR. KANE: If they get a variance then they go to the Planning Board which will allow them or disallow them to make lots. Right now it's all one big, without the variance then it's no good. Any other questions from the Board at this time? Okay at this point I'm going to open it up to the public and ask if there's anybody here for this particular hearing? Seeing as there's not we will close the public portion of the meeting and bring it back to Nicole and ask how many mailings we had?

MS. PELESHUCK: On the 26th day of June 2012 I mailed out 35 addressed envelopes and I did receive one response.

MR. KANE: Which I am going to read into the record and then we will address that for you. To Michael Kane, Chairman and members of the Zoning Board of Appeals, I'm sorry that I can't be there in person to address the request of the Hudson Valley SPCA's proposed three lot subdivision site plan, but I would like you to take into consideration something else besides the variance of the local zoning law when you make your decision. Since the HVSPCA has recently been running a legal notice in the local papers to notify people that they are doing away with the original pet cemetery on their land it appears that they intend to include the approximately three acres of pet cemetery in this lot division. I'm including a copy of New York State Division of Licensing Services on pet cemetery and pet crematorium laws on the removal of a dedication of a pet cemetery which states that you must have permission from the County's Supreme Court after certain steps are taken and may also include an environmental audit. The current people running the SPCA may have legally covered all their bases, but I feel there are also moral and ethical issues here. The Newburgh SPCA started this pet cemetery in the 1950s and there are hundreds of pets buried there by their loving owners who had complete trust that their pets would never be disturbed. These people also paid a lot of money for a perpetual care of these graves which went into a special fund that was never to be used for any other purpose. The

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majority of these people who loved their pets are now passed away but someone must speak up for them and say that this cemetery should remain as is and there should not be buildings and parking lots built over it. I would think that the HVSPCA people who profess to loving animals and wanting to take care of them would also care about our dear departed pets who were so loved by many previous SPCA members who trusted any new members coming after them to take care of their animals too. Sincerely, Eileen Feldt. And we have a copy of the code. Has that been addressed at all?

MR. EWALD: I don't know the answer. That question has been posed to us previously. I am currently not aware of exactly where the cemetery is situated on the site. We have indicated the crematorium and where the existing runs were.

MR. TORPEY: I did all the work there, I know exactly where it is.

MR. EWALD: I can look into it.

MR. TORPEY: It's right there on lot two and three. Right there, that's the lots.

MR. KANE: I mean I think what it comes down to with this letter here before this Board can make any kind of a decision on that is we need to know the status of that and what's going to happen there.

MR. EWALD: Okay.

MR. KANE: I mean that's the way I see it.

MR. SCHEIBLE: I can't understand why this is not shown on this map that we have here right now exactly what this woman wrote into us that not showing the identification of a location, I mean where this is. Now you're telling me you have no idea where this is. Something is wrong.

MR. EWALD: To be honest with you I'm not the lead on the project, I had to cover for someone tonight.

MR. SCHEIBLE: You are the engineer or surveyor?

MR. EWALD: Our firm is both engineering and surveying firm.

MR. SCHEIBLE: Right, I can't understand that you're coming in saying you don't know where it's located. I am sorry, that's the way I feel.

MR. EWALD: Understood.

MR. CHANIN: Without any question I would think if it is the Board's pleasure to table this matter to the next meeting you will come back with more

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information. Let me just also bring to your attention, if I might, that one of the questions which is not explicitly stated with which I think is raised by this letter it says that the people who ran the cemetery were endowed to, people paid money but that does not necessarily mean that that money was paid to the SPCA. It might have been paid to somebody running the pet cemetery before the SPCA acquired the property. In which case if the corporation or not-for-profit that was running the pet cemetery before the SPCA got involved went out of business, then the SPCA shouldn't be held accountable for that money because they never had it. On the other hand if the SPCA was in the pet cemetery business at that time, then under the law and also under the not-for-profit corporation law before they do away with the pet cemetery or any other fund that may have provided care for a cemetery they have to go through the Supreme Court and they also have to go through the State Attorney General who monitors the activities of not-for-profit corporations. So when you come back, if it's the Board's pleasure, if it's the Board's pleasure to give you another date to come back I would think the Board wants you to address not only the location of the cemetery and what plans the SPCA has for that cemetery if this subdivision is granted but you might also want to inquire about the history of the cemetery so you could address the issue of whether or not there's a fund still out there.

MR. TORPEY: They're showing a shed.

MR. KANE: They show a crematorium too. Okay, I will accept a motion to table the vote on this with the understanding the public portion of the meeting is closed and we will bring it back to the Board when we get further information at the next meeting or later to your -- the next meeting is two weeks?

MS. PELESHUCK: The 23rd.

MR. KANE: The 23rd would be our next meeting. So I need a motion on that.

MR. BEDETTI: I'll make a motion that we table the Hudson Valley SPCA's request for a variance for their three lot subdivision at 940 Little Britain Road on Route 207 NC zone until the issue of the pet cemetery has been resolved.

MR. HAMEL: I second that.

Roll call

MR. SCHEIBLE	Yes
MR. BEDETTI	Yes
MR. HAMEL	Yes
MR. TORPEY	Yes
MR. KANE	Yes

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**DANA TRIPODO-ANNACOME (12-22)**

MR. KANE: The next public hearing Dana 7  
Tripodo-Annacome, a variance for a proposed addition  
26 feet by 24 feet will not meet the minimum side  
yard setback of 20 feet. A variance of 11 feet is  
requested at 116 Cedar Avenue in an R-4 zone. Just  
speak your name and address, just like the  
preliminary meeting, speak loud enough for that  
young lady and tell us what you want to.

MS. TRIPODO-ANNACOME: Dana Tripodo-Annacome, 116  
Cedar Avenue, New Windsor, New York 12553. We want  
to put an addition off of the kitchen and we want to  
go out, it's going to be a 26 by 24 addition and it  
doesn't meet this 20-foot side yard. And it's just  
going to be a great room. And what we're going to  
do is we're going to bring the washer and dryer up  
from our cellar into that great room and also put a  
sink and a toilet in there, also.

MR. KANE: Are you cutting down any trees,  
substantial vegetation in the building of the  
addition?

MS. TRIPODO-ANNACOME: There's two little trees.

MR. KANE: Nothing substantial?

MS. TRIPODO-ANNACOME: No.

MR. KANE: Are you creating any water hazards or  
runoffs?

MS. TRIPODO-ANNACOME: No.

MR. KANE: Any easements running through the area  
where the proposed addition is going?

MS. TRIPODO-ANNACOME: No.

MR. KANE: And you're putting the addition in that  
space because of the way your home is built in that  
catty-corner, you're going to put that room in there  
which necessitates the side yard variance?

MS. TRIPODO-ANNACOME: It's really the cheapest way  
I can do it. I have a side door, a door off the  
kitchen and what I'm going to do is cut that door  
out. I can't even afford really to take down that  
wall, I'm just going to leave the wall, cut that  
door out and make an archway. I have no dining room  
in the house so that's why I'm going to make a great  
room so I can have family gatherings.

MR. KANE: You were going to put another bathroom in  
there?

MS. TRIPODO-ANNACOME: Yes.

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MR. KANE: You have Town water and sewer?

MS. TRIPODO-ANNACOME: Yes. 8

MR. KANE: Any further questions from the Board? Nothing at this time? We'll open it up to the public, see if there's anybody here for this particular hearing. Seeing as there's not we will close the public portion of the meeting and ask Nicole how many mailings we had?

MS. PELESHUCK: The 26th day of June 2012 I mailed out 68 addressed envelopes and received no written response back.

MR. KANE: Further questions, guys? I will accept a motion?

MR. HAMEL: I make a motion that we grant Dana Tripodo-Annacome the variance that is requested.

MR. TORPEY: I second that.

Roll Call

MR. SCHEIBLE	Yes
MR. BEDETTI	Yes
MR. HAMEL	Yes
MR. TORPEY	Yes
MR. KANE	Yes

**SANDRA BRUCE (12-17)**

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MR. KANE: The next public hearing is tabled from the last meeting, Sandra Bruce an interpretation and/or use variance is required for an existing adult bookstore located at 401 Windsor Highway in a C zone. Hi, so we're back. We've got the full board. Anybody have any additional questions?

MR. CHANIN: I just want the record to reflect Mr. Catalano, the applicant's attorney, is here with her tonight.

MR. CATALANO: Thank you.

MR. KANE: All right, no further questions, guys? You all caught up on the minutes? You're ready to make a vote?

MR. BEDETTI: What about the public hearing?

MR. KANE: It's closed. No further questions? We have a full Board, I will accept a motion. Remember motions always have to be in the affirmative.

MR. HAMEL: I'll make a motion that we grant Sandra Bruce the variance as requested.

MR. KANE: We're going to need to change that just a little bit, if you don't mind. You're going to have to say that we as a Board find an interpretation, okay, whatever you want to say after that.

MR. CHANIN: Interpretation that Section 300-27 of the Town code does not apply in this case in that said section applies to an adult bookstore and the applicant has presented the application in the sense that this is in fact a warehouse. There is a definition in the Town code which is strictly labeled mini warehouse but the applicant wishes the Board to consider that the operation and function of this building is that of a warehouse or mini warehouse and not an adult bookstore. Therefore if the Board interprets the code that way then no further variance would be required.

MR. KANE: I need a second on that.

MR. TORPEY: I second that.

MR. CHANIN: Actually you need somebody to move it first.

MR. BEDETTI: May I just ask a question on the motion?

MR. KANE: Yes.

MR. BEDETTI: The question is it's not an adult

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bookstore?

MR. KANE: No, it always has to be in the affirmative so. 10

MR. CHANIN: A vote of yes, a vote of yes indicates that the Board member voting yes considers the property at issue here to be a warehouse and not a bookstore.

MR. TORPEY: It's not open to the public?

MR. CHANIN: The public hearing has already been held. If the Board has any other questions to ask the applicant now is the time to do it.

MR. TORPEY: No, I'm good.

MR. KANE: The vote yes indicates that you're agreeing that as the applicant said that it's a warehouse, it's not an adult bookstore, simple as that.

MR. CHANIN: And no variance is required.

MR. BEDETTI: May I ask a question?

MR. KANE: I said before ask a question.

MR. BEDETTI: I'm asking a general question or maybe our counsel.

MR. CHANIN: If I can I will be glad to.

MR. BEDETTI: Does that mean that that warehouse does not make sales from that location?

MR. CHANIN: All right, good question.

MR. TORPEY: Not to the public, right?

MR. CHANIN: Let me, as they try to teach lawyers to do, let me try to put a fine point on it and counselor and applicant if anything I say is something that you don't want me to say or you disagree with or you think I'm putting the wrong words in your mouth then say so. The issue in this case concerns Section 300-27 of the Town code and specifically that part of that section which is called the preamble, the introductory words. The preamble refers to impacts that a particular land use may have on the welfare and morals and general welfare of the people of the town. Now, not to be sarcastic about it but to be very, very simple and straightforward about it this is the Zoning Board of the Town of New Windsor, it's not the Zoning Board of the State of New York, it's not the Zoning Board of the United States, it's not the Zoning Board of the western hemisphere. It's the Zoning Board of the Town of New Windsor. So your jurisdiction and

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jurisdiction is a fancy long legal word that lawyers use that simply means power, what power do you have, the power, the jurisdiction of this Board. And by the way the jurisdiction of the Town Board is limited to the geographic area of the Town of New Windsor, all right? That means that the town code can only regulate activities that occur in the Town of New Windsor. Now this section of this local ordinance establishes the Town Board's interest in any impacts on the welfare and morals of the people of the town which means specifically that those impacts have to be local. It doesn't impact on people in California or New York City or Ohio or Western Europe. It's not just the activity but by using the word in the ordinance itself which the Town Board chose to adopt it's whether or not the applicant's activities have any local impacts. Now what Mr. Torpey said awhile ago and what some of the questions were at earlier meetings was whether or not the activities of this particular applicant in this particular location impact the welfare or the morals of the people of the Town of New Windsor because that's as far as your jurisdiction extends it cannot extend farther than that. If you think that those activities impact the morals of the people in New Windsor because of what happens at that address then that's within your scope of decision making. If whatever they're doing there no matter what it is does not have a local impact on the welfare of the moral of the people of this Town then your jurisdiction is done. Is that helpful? Counselor, is that a fair statement?

MR. CATALANO: It is.

MR. SCHEIBLE: Who governs this interpretation of what you just were saying.

MR. CHANIN: The answer is that it's a tiered system of law that we live in New York State thanks to the State Legislature who created in towns like this Zoning Boards and Planning Boards. So the tiers are as follows, the ordinance, this is true by the way in any town in the State of New York, the town code, your local town laws and rules and regulations originate from the town board. Land use questions under that town code go to the planning board which applicants have to file a site plan and have a site visit by the building inspector and the town engineer and so forth. Now, if a proposed use by anybody who owns land in the town does not conform to the provisions of the town code the planning board and the building inspector have no choice they must send it here and this board determines whether or not number one a particular application does or does not fit into the definitions of the local town ordinance because it's strangely but exclusively the province of zoning boards to render such interpretations. And after you decide whether or not the ordinance applies in the first place it is

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within the scope of your authority after taking into account all relevant questions and information whether or not a variance is or is not appropriate to grant. Now, once you make that decision the applicant is not without any remedies. If the applicant disagrees with you they can bring an action in Supreme Court, if they win or lose the losing party can appeal and so forth and so on. But the province of the Zoning Board here and everywhere else in the State of New York because this is state law it applies everywhere is number one it's your particular province to make an interpretation which is what you're being asked to do in this application. And number two in a given appropriate application to decide whether or not to grant or not grant a variance. In this particular case however the first thing you should decide is your interpretation because once you make that interpretation that will tell you what happens next if anything.

MR. BEDETTI: If I read this correctly it says if we were to say that they are bound by the conditions of 327 it would only mean they have to go before the Planning Board and apply for a permit.

MR. CHANIN: They have to go to the Planning Board no matter of what. After they leave they are they are to go back to the Planning Board no matter. When you decide whether or not Section 300-27 applies or not, this Board is exercising its responsibility to render an interpretation. If the Board decides 300-27 doesn't apply at all because it's a warehouse and not a bookstore then when they go back to the Planning Board they won't have to go down that path, they will have to go down a different path.

MS. PELESHUCK: Were not referred here from the Planning Board.

MR. CHANIN: But afterwards they have to go back there. Does that help?

MR. KANE: Simply put the Zoning Board, we decide if they can do it, Planning Board decides how they are going to do it.

MR. BEDETTI: We would not be denying them the right to apply to the Planning Board?

MR. CHANIN: That has nothing to do with it. Your function is either interpret the code and depending on the interpretation whether or not to grant a variance. If you decide 300-27 doesn't apply you don't need to give the variance.

MR. CATALANO: I am not sure we have to go to the Planning Board after this. I think this was just, I think that the use that we're asking for is zoning.

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I'm not sure we have to go. If we do, we will.

MR. KANE: That's out of our realm one way or the other.

MR. CHANIN: One way or another it's out of your realm. Your job is to decide on an interpretation. Keep in mind just general that based on state law which set this up all over the State of New York it's a hierarchy. The ordinance comes from the town board, the planning board is referred applications about proposed land uses and then if those land uses don't comply with the town code the applicant has to come here either for an interpretation or a variance. It's a hierarchy. And that's how it works. And then after that local process is done one way or another if a party is aggrieved by the result they can take it to court and file an action and get a judge to look at what happened and decide whether or not it was under the law or not.

MR. KANE: Further questions?

MR. BEDETTI: Thank you very much.

MR. CHANIN: You're well.

MR. KANE: If not I will accept, we have our motion and did we get a second on that?

MR. TORPEY: I seconded it.

MR. CHANIN: You got a motion and a second.

MR. KANE: We're down to the vote.

MR. SCHEIBLE	Yes
MR. BEDETTI	No
MR. HAMEL	Yes
MR. TORPEY	Yes
MR. KANE	Yes.

(The court reporter concluded recording the minutes of the meeting.)

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C E R T I F I C A T I O N

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THE FOREGOING IS CERTIFIED  
to be a true and correct transcription of the  
original stenographic minutes to the best of my  
ability.

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Roberta O'Rourke