A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, July 7, 2014 at the LaGrange Town Hall, 120 Stringham Road at 7:30 p.m. Chairman Paul Bisceglia called the meeting to order. Board members Nancy Swanson, Mark Christenson, Sandra Lane, Christian Rohrbach and alternate Leana Cropp were present. Janis Gomez Anderson Esq. of the firm of Van DeWater & Van DeWater and John Lyons, Esq. of the firm of Grant & Lyons LLP were also present.

Mr. Bisceglia made a motion to accept the minutes of June 2, 2014 as written. Mr. Rohrbach seconded. Ms. Swanson abstained as she had been absent at the June meeting. The motion carried with aye votes from Mr. Bisceglia, Mr. Christenson, Ms. Lane, Mr. Rohrbach and Ms. Cropp.

OLD BUSINESS:

3-12-01 AREA VARIANCE: MYLES LANDSTEIN, 16 VELIE ROAD, LAGRANGEVILLE, NEW YORK Grid No. 6560-01-138549
Seeking relief from Chapter 240-28 Schedule B that states that the maximum height of a building or structure in an R-120 zoning district is 35' and seeking relief from Chapter 240-31 F.(4)(f) Ridgeline Protection Overlay Zone which states that the proposed yard setbacks from the property line must be no less than 1.5 times the height of the proposed structure or the setback requirements in the existing zoning regulations, whichever are greater in order to construct a ham radio tower with boom antenna with a proposed height of 70' and a boom width of 23 feet and proposed setbacks of 40' and 70' from the side and rear yards.

No one was present to represent the application. The application was adjourned to the August meeting.

1-14-01 APPEAL: GROOMINGDALES DOGGIE DAY CARE & SALON LLC, 385 NOXON ROAD, LAGRANGEVILLE, NEW YORK Grid No. 6560-04-612217
Appealing the Building Inspector's decision that a Special Use Permit is required to operate Groomingdales Doggie Day Care & Salon LLC in an H (Hamlet) zoning district

Mr. Redl was present to represent the application.

Mr. Bisceglia explained that a Resolution had been prepared by Mr. Lyons. He asked Mr. Lyons to take the board through the document.

Mr. Lyons said the board had arrived at a decision with regard to the appeal and the plan was that Mr. Lyons would assist the board by writing out a decision setting forth the reasons so that the record would be clear with regard to their determination in the matter. The document was in front of the members. One document was called The Decision which set forth their analysis of the case and the findings of fact and their conclusions of law and set forth what their determination was. The second document before the board was the Resolution adopting that decision if they decided to do that that night. The content of the Resolution summarizes the decisions they made and indicates that they would be adopting that decision that evening and issuing the orders that were set forth in that Decision for the Building Inspector to follow.

Mr. Bisceglia asked if it was appropriate to supply a copy of the document to the applicant. Mr. Lyons said it was appropriate but first the board should make their decision as to whether they would move forward on it and adopt the Decision. Copies would then be provided to the applicant, the Building Inspector, the Administrator of Public Works and the Town Supervisor.

The board then took a few minutes in order to review the document.

Mr. Bisceglia asked if the board was in agreement with what they had discussed at the last meeting.

Mr. Rohrbach said he would like to point out that in the matter of the outdoor dog run they were fairly explicit that they found that a reasonable adjunct to the current use of the grooming facility and as such they talked about it being a minor usage. He wanted to make sure that they did not suggest that the outdoor dog run was acceptable and could be expanded into something greater.

Mr. Bisceglia agreed and said it would be a requirement to keep it "as is" and not to be expanded further. Mr. Redl said they had no intention of expanding that.

At this point a copy of the Resolution was provided to the applicant.

Mr. Lyons recommended that a portion of the Decision, starting at section IV Building Inspector's Decision Appealed From on page 4 be read into the Minutes which set forth the Findings and when read to the end what the Decision was. The sections that preceded that were the I. Preface that explained how they got to that point, section II. SEQRA Compliance which discusses SEQRA. Because this is a determination a SEQRA review is not required. Section III. Legal Basis for ZBA Authority which is just a discussion for the public which explains what the board's authority was in connection with reviewing interpretation applications. Section IV is where they begin talking about the issues that are presented in the case. Section V sets forth the Findings and Decision and Section VI sets forth their determinations and orders.

Mr. Lyons then read the Decision into the minutes, beginning at section IV. Building Inspector's Decision Appealed From and continuing to end of section VI. Decision (see Addendum 1 attached)

Mr. Bisceglia said that Mr. Lyons had done a fine job in preparing the document. It covers all the issues that the board had discussed. Mr. Lyons said he was just implementing the decisions based on the analysis and decisions that the board had made.

Mr. Bisceglia said that, based upon the Decision, ZBA Case No. 1-14-01, that had just been read, he made a motion to adopt that Decision for the Groomingdales appeal. Mr. Christenson seconded and the motion carried unanimously. GROOMINGDALES DECISION ADOPTED

12-13-01 AREA VARIANCE: JASON LEISCH, 17 MANOR DRIVE WEST, POUGHKEEPSIE, NEW YORK Grid No. 6360-02-506602
Re-opening public hearing to consider an amendment of the Decision and Order dated April 7, 2014

Mr. Leisch was present.

Mr. Bisceglia said there were some issues in front of the board regarding a variance that had been granted. Apparently since the variance had been granted there had been some complaints. In order to listen to those complaints the public hearing would have to be re-opened and there would be a certain procedure that would have to be gone through.

Ms. Gomez Anderson said the board needed to have a discussion as to whether they needed to re-open the public hearing. Ms. Swanson had asked the question whether the storage of contractor equipment on a residence is illegal and shouldn't that matter be handled by violation. Ms. Gomez Anderson said the board issued a variance to build a garage a certain location from the property line but they placed no conditions in the decision on how the garage would be used. She said the question is whether this is a ZBA matter or whether the zoning administrator should handle it. When a variance is granted it is still required that the applicant comply with the Town Code. They granted a variance to build a building and no conditions were put on it. One of the issues for re-hearing is circumstances that merit a re-hearing. They have to have a good faith reason for re-hearing which typically involves changed circumstances. They have to determine that any vested rights would not be prejudiced by the re-hearing.

Mr. Bisceglia said that under this application it is stated that the garage was supposed to house a camper and also other equipment that he had in his yard. However, the concerns that the town had received are about a commercial business on the premises. Ms. Gomez Anderson said the question is whether that is for the Zoning Board of Appeals or an issue for the zoning administrator. By re-hearing the matter it would require putting a condition on saying they are not going to allow something that is not allowed anyway. This is a matter up to the zoning administrator to enforce. Ms. Lane asked if it has been determined that a business is being conducted from the premises. Ms. Gomez Anderson said she understands that at the December 2013 meeting Mr. Leisch stated that he would be storing some equipment he uses for his business in one of the bays. As she understood it before now he did not store anything on the property, and now there are neighbor complaints. These are neighbors who were notified and had the opportunity to come to the public hearing but did not. However, the application was not for a variance to operate contractor equipment or have a business.

Mr. Bisceglia asked if someone operates their business in another location but they drive their truck home and leave a piece of equipment in their driveway, is that illegal? Ms. Gomez Anderson said it is not as clear cut as that. In the Town of Poughkeepsie a special permit is required in order to park a commercial vehicle in certain neighborhoods overnight. Ms. Gomez Anderson said the interpretation would have to be made by the zoning administrator that this proposed activity rises to the activity of a business out of the property. This is not a home occupation which is defined as certain businesses operated from the confines of the home. Typical businesses are landscapers, contractors, excavators, big

construction equipment that they are housing on their property as it is less expensive than renting commercial space. They are not doing the business from their home but they are operating from the home.

Mr. Bisceglia said they granted the area variance to put up the building to house the camper and the equipment he mentioned in the minutes, but it did not address anything about a commercial business. He did not think it was the ZBA's position to recognize that. That falls under the zoning administrator.

Mr. Rohrbach said it was not the board's intention to address the legal use of the property by giving the variance. Mr. Christenson said they gave an area variance, not a use variance.

Mr. Bisceglia said as far as the process is concerned, they did their due diligence, the adjoining properties were notified and they had the opportunity to speak and voice any concerns then. Now that something else is happening at this location, this is not their responsibility. Ms. Lane agreed. She said it is up to the zoning administrator. If there is a business being run, then they can come to the board and appeal.

Ms. Gomez Anderson said someone on the board needed to make a motion to re-hear the application. There had to be a unanimous decision to re-hear it.

Mr. Bisceglia asked if a motion was made and there was a unanimous decision to re-hear the application, where did that leave the applicant? Ms. Gomez Anderson said that would put a pause on him being able to do anything. Another public hearing would have to be advertised and notification letters sent and that expense would be put on the applicant.

Mr. Christenson said the facts were divulged in the December minutes which means that is testimony the board heard but they did not consider that.

Ms. Gomez Anderson said the variance granted was the right to build a building in a certain location. It was mentioned that the applicant might use the garage for the equipment but they could not state that in the Findings for an area variance. Assuming it is an illegal use in the neighborhood, then it would be a use variance.

Ms. Swanson then made a motion to open the application for a re-hearing. Mr. Rohrbach seconded. The motion was opposed unanimously. MOTION TO RE-HEAR APPLICATION DENIED

NEW BUSINESS:

7-14-01 AREA VARIANCE: CRAIG HERNANDEZ, 38 KEVIN HEIGHTS, POUGHKEEPSIE, NEW YORK Grid No. 6260-04-820139
Seeking relief of 10' from the property line in order to erect a 10' x 12' accessory structure with a proposed setback of 5' from the property line, per Chapter 240-29 G.(1).

Craig Hernandez was present and was sworn in by Mr. Christenson.

Mr. Hernandez said that he used to own a house in the town of Hyde Park prior to moving to the Town of LaGrange in 2004. He built a shed on that property, the same shed that the board had the plans for. He moved to a raised ranch in the Town of LaGrange which did not have the storage space that he would need for a family. The house has a 10' x 10' shed on the property that has a C.O. On May 2, 2014 he spoke to Susan Quigley and told her he wanted to take down the 10' x 10' shed and build a 10' x 20' shed. Susan Quigley said that according to the zoning laws the shed would have to be 15' from each property line. He said it is a 20' shed plus 15' to the property line. He only has half an acre and he lives on a hill. There is a very small section that is flat. He asked if he could put a second shed on his property. She said she believed so but she would have to check with the Building Inspector. He said he wanted it in writing. She said if he sent a letter the town would respond. He said he wanted to do everything legally. He wrote a letter dated May 5, 2014, a copy of which had been provided to the board. The letter stated that he wanted to build a second shed and to make sure it was OK before wasting money on the permit . He called on May 29th and said he had not got an answer from the Building Inspector. Susan said "No problem". She spoke to the Building Inspector and confirmed that the Building Inspector said it was OK but he would need a permit for the second shed. He returned to the Town Hall on June 3rd. He paid the $145 permit fee and was told in seven days he would have his permit. Nobody called him. He went back to the Town Hall on June 19th, hopefully to pick up his permit. He was told the town was just writing him a denial letter. Mr. Hernandez asked why. The Building Inspector said he had just spoken to the Supervisor and it was not in the spirit of the law to allow two sheds on any one property. He said he wanted a 10' x 20' shed. He did not want two sheds on his property. The office told him the best way would be to get two sheds on his property. He was told that he could appeal but he had missed the deadline for July but could be on the August agenda. He said he started this in May and he did not want to build the shed in August. He went upstairs and spoke to the Supervisor's secretary. He wondered why the Supervisor was involved in a permit. He was told the Supervisor was not involved. When he returned home he received a message from Susan telling him that if he could get to the Town Hall by the following day, June 20th, with $150 he could get on the July agenda, which he did.

Mr. Hernandez said he had his property surveyed in 2010 because he wanted to put up a fence. When he put the fence up he purposely put the fence 2 feet from the property line as he did not want to be accused of being over the property line. When he applied for the shed he said he wanted a shed about 3 feet from the property line as per §240-47. He was told it could not be about 3 feet, it would have to be exact.

Mr. Bisceglia said the application before the board says he is seeking relief of 10 feet from the property line for a 10' x 12' accessory structure. Mr. Bisceglia asked if that is what he wants. Ms. Gomez Anderson asked for clarification as to whether this is a second shed. Mr. Hernandez said this is a second shed. Ms. Gomez Anderson said so he didn't ask for a variance just to have one shed, 10' x 20'? He said, no because he was told he could not do that without having to go through this process which he did not want to do.

Mr. Bisceglia asked what he wants. Mr. Hernandez said he does not want to spend any more money. He is $366 in the hole for a shed he does not have. The 10' x 10' shed he has is too small. He would like to have a 10' x 20' shed that is not in the middle of his back yard. If the

board would give him a variance for a 10' x 20' shed 5 feet from the property line he would be very happy.

Mr. Bisceglia asked the secretary if all the neighbors had been notified. The secretary said yes. Mr. Hernandez said there are two other properties on the next road that have two sheds. His house is on a hill. Wherever he puts the shed in the back yard will not be visible from the road.

Mr. Bisceglia asked if there had been any comments from the neighbors. The secretary said no.

Mr. Bisceglia made a motion to open the public hearing. Ms. Lane seconded and the motion carried unanimously.

Ken McLaughlin, the Building Inspector said he had no objection to the proposal.

Mr. Bisceglia said if Mr. Hernandez wants to change his application to a 10' x 20' shed it will have to be re-advertised and heard at the August meeting.

Mr. Hernandez explained that when Ms. Swanson visited the house that afternoon, his wife misspoke. The original plan was to take down that shed and put up the 10' x 20'. Ms. Swanson had said she did not have any problem with the site location as long as the second shed was removed. Mr. Hernandez said the plan has changed. Mr. Bisceglia said the existing shed is on the other side of the property from where he wants the other 10' x 12'. Mr. Hernandez said correct. He is proposing that the shed be 5 feet from the property line. Mr. Bisceglia asked if he had a present survey of his property showing the pins. Mr. Hernandez said he had a survey but not the pins. Mr. Bisceglia said that will be required to establish exactly where the shed will go, five feet from the property line.

Mr. McLaughlin said he felt Mr. Hernandez proposal to have a 10' x 20' shed is more than reasonable. The code was designed for a single shed in the rear corner of a property so that it would not sit in the middle of a yard. As a result of this conversation the town is changing the code to specifically state a single shed in the rear corner.

Mr. Bisceglia said Mr. Hernandez said he stood a good chance of getting a variance that night for a 10' x 12' shed but he would have to wait until the next month if he wanted the 10' x 20' shed because it would have to be re-advertised. Mr. McLaughlin said the town would cover the cost of the re-advertising.

Mr. Hernandez said if it was not going to cost him anything more he would like to have the 10' x 20' with a setback of 5 feet from the property line.

Mr. Bisceglia asked what type of shed was it going to be. Mr. Hernandez referred him to the shed design that the board had before them. The height of the shed would be 9' 8" to the peak. Ms. Gomez Anderson said if at the next meeting Mr. Hernandez decides he would like a smaller shed than 10' x 20' that would be acceptable.

Mr. Christenson said he did not understand why he needs 15' for a 10' x 12' shed. Mr. McLaughlin explained that it is a second shed. He said the code was designed to allow people to have a single shed in the rear corner of the yard. It is a long-standing interpretation. The code will be changed to be specific that a single shed will be permitted with this exception.

Ms. Swanson asked if Mr. Hernandez was going to keep the existing shed. Mr. Hernandez said the 10' x 10' shed would come down to put the 10' x 20' shed roughly in its place. He indicated on his plot plan where the shed would be going. Ms. Swanson said if he could have the existing shed plus a 10' x 12', would he want that? Mr. Hernandez said no, because the 10' x 10' needs work plus it is one of those barn styles where the roof tilts inn and you cannot put any shelves in and you can't stand anything against the wall.

Ms. Swanson said she had a question for the Building Inspector. He has paid two fees. Are those both required for an area variance? Mr. McLaughlin said the first fee is for the building permit and the town's auditors require that the fee be paid up front. In the event the variance is declined the applicant may request return of the building permit fee minus the administrative fee.

Ms. Gomez Anderson said she recommended that Mr. Hernandez should keep both options open. The notification should mention both options. More than likely the 10' x 20' shed will be the focus at the next meeting but the notification should be for a second 10' x 12' or a single 10' x 20' shed with a proposed setback of 5' from the property line.

Mr. McLaughlin added for the record that for multiple sheds, under the building code structures must be separated by 10'. Many people put these sheds in without permits and then it poses a problem when the property is sold. Mr. McLaughlin said Mr. Hernandez always has made it a point to come in and get the appropriate permits.

Mr. Bisceglia said the board would be adjourning the application, the application would be re-advertised, Mr. Hernandez would amend his application and the proposal would be on the August 4th agenda.

Mr. Bisceglia then made a motion to adjourn the application. Ms. Lane seconded and the motion carried unanimously. PUBLIC HEARING ADJOURNED

Mr. Bisceglia made a motion to close the meeting at 8:50 p.m. Ms. Lane seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley

Susan Quigley, Secretary

ZONING BOARD OF APPEALS
TOWN OF LAGRANGE

In the Matter of the Appeal of

GROOMINGDALES DOGGIE DAY CARE & SALON LLC, FRANK REDL, and JOYCE REDL

from a Decision of the Zoning Enforcement Officer of the Town of LaGrange dated October 18 , 2013

Decision

ZBA Case No. 1-14-01

Decision Date: July 7, 2014

I. Preface

This case is an appeal by Groomingdales Doggie Day Care & Salon LLC, and its members Frank Redl and Joyce Redl, from the decision of Kenneth McLaughlin, Building Inspector of the Town of LaGrange (the "Town") dated October 18, 2013. For convenience, Groomingdales Doggie Day Care & Salon LLC, Frank Redl, and Joyce Redl, shall hereafter be referred to collectively as the "Appellant." The Appellant has been represented before this Board by Frank Redl.

This appeal concerns the 6.2 acre property located at 1385 E. Noxon Road, in an H (Hamlet) zoning district in the Town. That property bears the tax grid number 6560-04-612217. Groomingdales is operated by Frank Redl and Joyce Redl, who are tenants on the property.

Appellant appeals from a determination made by the Town Building Inspector set forth in a letter addressed to Appellant dated October 18, 2013. A copy of that letter is attached as Exhibit A. In that letter, the Building Inspector issued several determinations relative to the Appellant's dog grooming and dog day-care business as follows:

- ☐ That the Appellant's use of the property qualifies as a "retail goods and services" use in the Hamlet District.
- ☐ That Appellant's business qualifies as a retail goods and services business "assuming that the entire use is contained within the building; no outdoor dog runs are permitted."
- ☐ That in the Hamlet Zoning District, a retail goods and services use requires a Special Use Permit pursuant to Zoning Code Section 240-27.
- ☐ That any use requiring a Special Use Permit also requires Project Development Plan Approval pursuant to Section 240-72 of the Zoning Code.
- ☐ That no area variances were required to establish the business because the structure in which the business is proposed to be located pre-dates the adoption of the Zoning code and is therefore legally non-conforming as to area.

An extensive public hearing was held in connection with this matter. The notice of public hearing was published in *Poughkeepsie Journal* on December 27, 2013. The public hearing

public hearing was finally closed on June 2, 2014. At the multiple public hearing sessions, the Appellant and the public all had ample opportunity to present their comments and arguments.

E. The questions presented on this appeal are issues of interpretation of the provisions of the Town of LaGrange Zoning Code. A ZBA decision interpreting an existing code, rule or regulation constitutes a Type II action under the State Environmental Quality Review Act ("SEQRA"), and thus, does not require a SEQRA review.

F. The ZBA has reviewed the Building Inspector's decision appealed from, the appeal application filed by the Appellant; the written and oral testimony, evidence and legal arguments offered by the Appellant and the comments of the public over the course of all of the sessions of the public hearing.

G. The ZBA has reviewed the applicable portions of the Town of LaGrange Zoning Code and has consulted with its attorney.

NOW, THEREFORE BE IT RESOLVED, BY THE TOWN OF LAGRANGE ZBA AS FOLLOWS:

SECTION 1. We adopt our written Decision in this matter dated July 7, 2014, a copy of which decision is attached hereto and made a part hereof.

SECTION 2. Based upon the findings of fact, conclusions of law and reasoning set forth in our Decision, we determine as follows:

2.1. We affirm the Building Inspector's determination that the Appellant's business qualifies as a "retail goods and services" business.

2.2. We reverse the Building Inspector's determination that the Appellant is required to obtain both a Special Use Permit and Project Development Plan approval and hold that neither a Special Use Permit nor Project Development Plan approval are required in this case.

2.3. We reverse the Building Inspector's determination that the Appellant's "retail goods and services" business is restricted to indoor activities only and that an outdoor dog run is prohibited and we hold that the Appellant's business is not restricted to indoor activities and that the outdoor dog run is a permitted part of the Appellant's business.

2.4. We determine that the Appellant's business is not a nonconforming use.

2.5. We affirm the Building Inspector's determination that no area variances were required to establish the business because the Appellant's premises is legally nonconforming as to area.

2.6. We determine that the provision of the Zoning Code which applies under the facts of this case is Section 240-85.

As the Town ZBA, we have been given certain powers and authority under the State Town Law. Our jurisdiction is primarily appellate, which means we hear appeals from the decisions of the Town officers who administer the Town Zoning Code, such as the building inspector and zoning administrator. Section 267-b(1) of the State Town Law says:

> The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.[4]

In other words, our appellate jurisdiction allows us to interpret the Town's zoning laws and ordinances.[5] In essence, one of the primary responsibilities delegated to us is that, upon an appeal, we may reverse, affirm or modify any order, requirement, decision, interpretation or determination by an administrative officer. Pursuant to that same authority, we may then make in its place the order, requirement, decision, interpretation or determination that we believe should have been made in the first instance. In its simplest terms, an appeal seeking an interpretation is an appeal to us claiming that the enforcement official's decision about the Zoning Code was incorrect. Thus, while the building inspector or zoning enforcement officer may have the first instance of interpreting a local law or zoning ordinance, if there is an aggrieved party that does not agree with that initial interpretation, that decision may be appealed to the us and then we become the ultimate interpreter of the Zoning Code.[6]

3. *De Novo* Review

When tasked with reviewing a decision of the zoning administrator or building inspector, we have the authority to conduct a *de novo* review. This means that we review all of the facts and we decide the case as though we were standing in the shoes of the building inspector or zoning administrator.[7] Thus, while we can look to the original decision as guidance, we are not bound by the decision, and may decide the appeal based on our own interpretation. As a ZBA, in a case like this one, we are tasked with interpreting the building inspector's determination as if we were the building inspector. When reviewing the building inspector's decision, our job is to "... make such order, requirement, decision, interpretation or determination as *in [our] opinion ought to have been* made in the matter by the administrative official charged with the

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[4] New York State Town Law § 267-b(1).

[5] Cesar A. Perales, Zoning Board of Appeals, **New York State Department of State, November 2005, reprint 2011, pg 9.**

[6] Terry Rice, Commentary to New York State Town Law § 267-a.

[7] New York State Dept. of State, *Zoning Board of Appeals*, **James A. Coon Local Government Technical Series, 2005, at p. 4.**

enforcement of such ordinance or local law....".[8] Thus, our job is to conduct this review as if we were interpreting the Zoning Code in the initial instance.

IV. Building Inspector's Decision Appealed From

Appellant appeals from a determination made by the Town Zoning Building Inspector set forth in a letter addressed to Appellant dated October 18, 2013. A copy of that determination letter is attached as Exhibit A. In that letter, the Building Inspector issued several determinations relative to the Appellant's dog grooming and dog day-care business.

At the outset, the Building Inspector determined that the Appellant's use of the property qualifies as a "retail goods and services" use in the Hamlet District. Further, the Building Inspector determined that Appellant's business qualifies as a retail goods and services business "assuming that the entire use is contained within the building; no outdoor dog runs are permitted."

Next, the Building Inspector determined that in the Hamlet Zoning District, a retail goods and services use requires a Special Use Permit pursuant to Zoning Code Section 240-27. He determined further, that any use requiring a Special Use Permit also requires Project Development Plan Approval pursuant to Section 240-72 of the Zoning Code.

Next, the Building Inspector determined that no area variances were required to establish the business because the structure in which the business is proposed to be located pre-dates the adoption of the Zoning code and is therefore legally non-conforming as to area.

Other than the brief explanations set forth above, the Building Inspector did not provide any further reasoning or elaboration in support of the conclusions which comprise his determinations. Because of the scarcity of supporting explanation in his written decision, and because of the confusing fact history of this matter, the Board invited the Building Inspector to appear before the ZBA during the public hearing sessions to elaborate upon the basis for his determinations. The Building Inspector declined to appear. In an effort to ascertain more insight into the reasons for the Building Inspector's determinations, during the public hearing stage, the ZBA obtained the entire Building Inspector's file on this matter. This material was also made available simultaneously with the Appellant in the interests of fairness.

V. Findings of Fact and Discussion of Issues Presented

1. Nature of Appellant's Business

Appellant is in the business of providing dog grooming services and dog day-care services. According to the Appellant, the business is described as follows:

> The business plan consists of pet owners purchasing passes for the day care of their dogs daily, weekly or monthly. After proper screening of the dogs and proof of vaccinations, the dogs are dropped off at various times of the day at the

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[8] *Matter of Concetta T. Cerame Irrevocable Family Trust v. Town of Perinton Zoning Bd. Of Appeals*, 6 A.D.3d 1091, at 109 (4th Dept., 2004) (emphasis in original).

convenience of the dog owners and picked up later in the day, the hours of operation are Monday through Friday from 7 AM to 7 PM.

Dog grooming services are also offered.

There are no overnight accommodations offered at the present time. (See Appellant's Narrative, p. 4)

While some of the neighbors have raised arguments as to how this use should be characterized, the facts about the essential nature of the use are undisputed. We agree with the Building Inspector's determination that this business qualifies as a "retail goods and services" business.

During the course of the public hearing, some neighbors have asserted that the Appellant's use of the property should be characterized as a kennel use because of the fact that some dogs stay at the Appellant's facility for day-care.

We note that neither "retail goods and services" nor "kennel" are terms which are defined in the Zoning Code. Hence, the Code provides no guidance.

We have considered the neighbors arguments carefully, but we do not agree that Appellant's business qualifies as a kennel. In our opinion, there is a land use distinction between a business that offers day-care for dogs as part of a wider set of dog care services, and a business that offers overnight and/or long term boarding services for dogs. While there is some similarity in the sense that both business uses generally offer shelter for dogs, we find there is an essential difference in the nature between overnight and long term boarding services and day-care.

The "retail goods and services" use is not defined in the Zoning Code, but by its very language, it is an open and widely inclusive term. The threshold for qualifying to meet this term is admittedly low, and the retail dog care services offered by the Appellant's business easily qualifies for this broad use category.

Hence, we determine that the Appellant's business does qualify as a "retail goods and services" use.

2. Special Use Permit and Project Development Plan Approval Requirement

In his October 18, 2013 determination, the Building Inspector states that both a Special Use Permit and Project Development Plan approval are required for Appellant's business.

In his determination, the Building Inspector determines without supporting explanation that a Special Use Permit is required for a retail goods and services use in the Hamlet Zoning District, and he refers to the Use Table, Code Section 240-27, Schedule A, as the basis for this determination.

We do not dispute the content of Zoning Code Section 240-27, Schedule A. However, we do not agree that it requires a Special Use Permit on the facts of this case.

Here, the Appellant's use of this site for retail goods and services is a continuation of the same use at that site by previous occupants of the building. The Appellant has testified that it is uncontroverted that "the site has been utilized for retail for decades" (See Appellant's Narrative, p. 13). The Appellant also testifies that a Project Development Plan was issued for this site in 1981 (See Appellant's Narrative, p. 3).

Code Section 240-27, Schedule A, applies to the establishment of new uses. Hence, if the Appellant were to be establishing the first retail goods and services use at this site, then a Special Use Permit would be required. But where a use of land has already been established, a mere change in ownership or operator of the use does not require the issuance of a Special Use Permit. Instead, in those circumstances Code Section 240-85 entitled "*Use Permits*" is the appropriate Code section to apply.

Code Section 240-85(A) states:

> Purpose. Administration of this chapter pertaining to nonresidential uses and pertaining to the establishment or change of each particular separate business, trade, office, industry, institution or other nonresidential activity, including the change of owner, operator or name of any established nonresidential activity, requires a means of monitoring and enforcement of continuing compliance. That means shall be the use permit prescribed in this section. (emphasis added)

This Section is expressly designed to address the fact pattern presented in this case. Here, the Appellant constitutes a change of operator of a continuing retail goods and services use in this building at this site. Since there is no definition of "retail goods and services", and as noted earlier, the term itself is broad and potentially encompasses a wide range of retail businesses, for Appellant's business to qualify, it is not necessary that Appellant's retail use be exactly the same as previous retail uses at this site. Simply qualifying within the "retail goods and services" category is sufficient.

Consequently, we find that the Building Inspector erred in determining that Code Section 240-27, Schedule A, requires that this Appellant obtain a Special Use Permit.

Our determination that no Special Use Permit is needed, also disposes of the issue regarding the need for Project Development Plan approval. In the Building Inspector's October 18, 2013 determination, the basis for requiring Project Development Plan approval is simply a function of the fact that all uses requiring Special Use Permits are also required to obtain Project Development Plan approval. (See Code Section 240-72). Once it is determined that no Special Use Permit is required, neither is Project Development Plan approval required.

Pursuant to our *de novo* review authority as described earlier, we determine that a Use Permit should be issued to the Appellant. Further, stepping into the shoes of the Building Inspector, we determine pursuant to Zoning Code Section 240-85(C) that the Appellant's current activity complies with the Code. We determine further that there is no need for Project Development Plan review pursuant to Code Section 240-85(C). While there are some indications in the Building Inspector's files that the Dutchess County Department of Public Works (DCDPW) may have desired a more "defined entrance" where the parking lot meets the street, we find here that the minor benefits of a more defined entrance do not justify the time and expense of a

Project Development Plan review, especially since this site has been in operation for retail good and services use over the years with no indication that the entrance is unsafe.

3. The Outdoor Dog Run

As part of his determination, the Building Inspector determined that the Appellant's use of the property qualified as "retail goods and services" "assuming that the entire use is contained within the building; no outdoor dog runs are permitted."

It would appear from the record, that the Building Inspector's issuance of the October 18, 2013 determination was prompted in part by the Appellant's construction of a small, outdoor, fenced-in dog run situated adjacent to the building. Subsequent to the construction of this run, the Town received several complaints from some of the neighbors.

According to the Appellant's testimony, the purpose of this dog run is to allow dogs at the facility for grooming and day-care to relieve themselves. Appellant also testifies that dogs do not stay in the run for an extended period, just long enough for them to accomplish their ends before return to the indoor facility.

We find no logical or legal basis for the Building Inspector's determination that this dog run is not allowed as part of the Appellant's business simply because it is outdoors. The Building Inspector provides no explanation or basis for this conclusion in this determination. He provides no citation to the Zoning Code (as was done in other parts of the determination) and neither does he provide any explanation based on the use history of the site. For ourselves, we can find no support in any provision of the Zoning Code for the idea that the Appellant's retail goods and services business must be restricted to indoor activities. And neither does the restriction seem logical to us. Indeed, there are already outdoor components of this business as it is necessary for customers to park their vehicles outside the building.

Hence, we overturn the Building Inspector's determination that Appellant's business is restricted to indoor activities and that the outdoor dog run is prohibited.

That said, despite the acrimonious spirit that has characterized the interactions between the Appellant and the neighbors, we urge the Appellant to be mindful of the possible disturbance that the outdoor dog run might cause to neighbors. We further urge the Appellant to place the dog run in the location on the site which is calculated to be of least impact to the neighbors, even if that means changing the dog run from it's present location. It is not within our authority to order the Appellant to do this, but we ask this to be done voluntarily based on a sense of community spirit.

4. Nonconforming Use Status

We note that as part of this appeal, the Appellant asserts that its business should be characterized as a nonconforming use. In order to do this, the Appellant's use would have to be a use that is not a permitted use in the Hamlet Zoning District. That is not the case. Since we have already affirmed the Building Inspector's determination that the Appellant's business is a "retail goods and services" use, and that a "retail goods and services" use is undisputedly a permitted use in the Hamlet District pursuant to Zoning Code Section 240-27, Schedule A, by

definition it is precluded from being classified as a nonconforming use.

VI. Decision

For the reasons which have been set forth in detail above, we determine as follows:

1. We affirm the Building Inspector's determination that the Appellant's business qualifies as a "retail goods and services" business.

2. We reverse the Building Inspector's determination that the Appellant is required to obtain both a Special Use Permit and Project Development Plan approval and hold that neither a Special Use Permit nor Project Development Plan approval are required in this case.

3. We reverse the Building Inspector's determination that the Appellant's "retail goods and services" business is restricted to indoor activities only and that an outdoor dog run is prohibited and we hold that the Appellant's business is not restricted to indoor activities and that the outdoor dog run is a permitted part of the Appellant's business.

4 We determine that the Appellant's business is not a nonconforming use.

5. We affirm the Building Inspector's determination that no area variances were required to establish the business because the Appellant's premises is legally nonconforming as to area.

6. We determine that the provision of the Zoning Code which applies under the facts of this case is Section 240-85.

7. We determine further that, under Section 240-85(C) of the Zoning Code, the Appellant's business complies with the requirements of the Zoning Code and that no reasonable discretionary basis exists for requiring the Appellant to obtain Project Development Plan approval pursuant to that Section.

8. We determine further that the Appellant is entitled to a Use Permit pursuant to Code Section 240-85. We determine further that, upon filing the requisite application form(s) and paying the application fee, we order the Building Inspector to issue a Use Permit to the Appellant.

It is so ordered in accordance with the foregoing.

Dated: July 7, 2014
LaGrange, New York

Town of LaGrange Zoning Board of Appeals

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ZBA Vote

Roll Call	In favor	Against	Abstain
Paul Bisceglia, Chairman	aye	____	____
Nancy Swanson, Member	aye	____	____
Christan Rohrbach, Member	aye	____	____
Mark Christenson, Member	aye	____	____
Sandy Lane, Member	aye	____	____
Leana Cropp, Alternate	____	____	____ present

Exhibit A
to
Decision of theTown of LaGrange Zoning Board of Appeals
In the Matter of the Appeal of
GROOMINGDALES DOGGIE DAY CARE & SALON LLC
ZBA Case No. 1-14-01

TOWN OF LAGRANGE
OFFICE OF BUILDING INSPECTOR
120 Stringham Road, LaGrangeville, NY 12540
845-452-1872; Fax 845-452 7692

DATE: October 18, 2013

TO: Groomingdale's Doggie Day Care and Salon, LLC
c/o Frank Redl, Member
PO Box 403
Millbrook, NY 12545

FROM: Office of the Building Inspector

RE: Groomingdale's Doggie Day Care & Salon, LLC
Noxon Road
Grid No. 6560-04-612217

Dear Mr. Redl:

Groomingdale's Doggie Day Care and Salon, LLC ("Groomingdale's") is currently operating without the required zoning approvals from the Town of Lagrange. As you know, the court date for Case No. 13070214 has been adjourned until January 14, 2014. Pursuant to your request, enclosed are the supporting depositions of Terriann Albrecht (dated August 19, 2013) and Dawn Ward (dated August 16, 2013).

This letter is sent with the intent of informing you what zoning approvals are required to bring Groomingdale's into compliance in anticipation of coming to a resolution of the matter without having to proceed further in court.

Based on the information available to this office as of the date of this letter, it has been determined that Groomingdale's qualifies as a "retail goods and services" use in the Hamlet District. Groomingdale's qualifies as retail goods and services assuming that the entire use is contained within the building; no outdoor dog runs are permitted.

Please note that in the Hamlet District, a retail goods and services use requires a Special Use Permit. See Town Code §240-27 and Schedule A. Any use requiring a Special Use Permit, also requires Project Development Plan approval under §240-72. See Town Code §240-71(A). Special Use Permit and Project Development Plan approval are subject to review under the State Environmental Quality Review Act. (SEQRA).

Because the structure in which the business is proposed to be located pre-dates the adoption of the zoning code (the structure was built in approximately 1850 and was remodeled in 1960) and is therefore legal nonconforming as to area, no area variances are required to establish the business.

Finally, Groomingdale's will need a Certificate of Compliance pursuant to Town Code §240-81(B) and §83-10. The Certificate of Compliance cannot be issued unless all of the required provisions of Chapter 240 are complied with.

In summary, you will need the following approvals: Special Use Permit approval (§240-71); Project Development (site) Plan approval (§240-72); and a Certificate of Compliance (§240-81(B) and §83-10. The Special Use Permit and Project Development Plan applications will be subject to SEQRA review.

If Groomingdale's applies for Special Use Permit and Project Development Plan approval on or before November 8, 2013 to be placed on the Planning Board's December 19, 2013 agenda and continue to pursue these approvals diligently, the Town will hold its prosecution of Groomingdale's in abeyance.

Should Groomingdale's not apply by November 8, 2013 or should it fail to diligently pursue the required approvals, the Town will recharge Groomingdale's for its violations of the Town Code, and such charges will include any charges related to the operation of the business both prior to and after November 8, 2013.

Should you disagree with the determinations made in this letter with respect to the required approvals under Chapter 240 of the Town Code, you have sixty (60) days in which to file an appeal with the Town of Lagrange Zoning Board of Appeals.

Sincerely,

Kenneth W. McLaughlin
Building Inspector

KWM/sq
cc: Planning Board

ZONING BOARD OF APPEALS
TOWN OF LAGRANGE

Resolution

Adopting Decision of the Zoning Board of Appeals in In the Matter of the Appeal of GROOMINGDALES DOGGIE DAY CARE & SALON LLC, FRANK REDL, and JOYCE REDL from a Decision of the Building Inspector of the Town of LaGrange dated October 18 , 2013

ZBA Decision dated July 7, 2014

ZBA Case No. 1-14-01

WHEREAS:

A. This case is an appeal by Groomingdales Doggie Day Care & Salon LLC, and its members Frank Redl and Joyce Redl (collectively "Appellant"), from the decision of Kenneth McLaughlin, Building Inspector of the Town of LaGrange (the "Town") dated October 18, 2013.

B. This appeal concerns the 6.2 acre property located at 1385 E. Noxon Road, in an H (Hamlet) zoning district in the Town. That property bears the tax grid number 6560-04-612217. Groomingdales is operated by Frank Redl and Joyce Redl, who are tenants on the property.

C. Appellant appeals from a determination made by the Town Building Inspector set forth in a letter addressed to Appellant dated October 18, 2013. In that letter, the Building Inspector issued several determinations relative to the Appellant's dog grooming and dog day-care business as follows:

- ☐ That the Appellant's use of the property qualifies as a "retail goods and services" use in the Hamlet District.
- ☐ That Appellant's business qualifies as a retail goods and services business "assuming that the entire use is contained within the building; no outdoor dog runs are permitted."
- ☐ That in the Hamlet Zoning District, a retail goods and services use requires a Special Use Permit pursuant to Zoning Code Section 240-27.
- ☐ That any use requiring a Special Use Permit also requires Project Development Plan Approval pursuant to Section 240-72 of the Zoning Code.
- ☐ That no area variances were required to establish the business because the structure in which the business is proposed to be located pre-dates the adoption of the Zoning code and is therefore legally non-conforming as to area.

D. An extensive public hearing was held in connection with this matter. The public hearing was duly advertised and held at Town Hall and was opened at our meeting of January 6, 2014 and continued over numerous sessions at separate ZBA meetings until the

was opened at our meeting of January 6, 2014 and continued over numerous sessions at separate ZBA meetings until the public hearing was finally closed on June 2, 2014. At the multiple public hearing sessions, the Appellant and the public all had ample opportunity to present their comments and arguments.

Throughout the public hearing sessions, we received oral testimony, documentary evidence and legal arguments from the Appellant and the public. We have carefully considered all of the evidence, testimony, documents and arguments. We have also considered the present Town of LaGrange Zoning Law and the former Zoning Law as well as the powers to make determinations granted to us by the both the Zoning Law and the New York State Town Law. With regret, we note that at times the testimony and comment offered became personal in nature and veered far from the issues before us. We have worked hard in this decision to steer clear of irrelevant issues and comments and to address only the legal issues presented. This decision is based solely on the facts as best we were able to determine them from the record before us and upon the applicable law.

II. SEQRA Compliance

The questions presented on this appeal are issues of interpretation of the provisions of the Town of LaGrange Zoning Code. A ZBA decision interpreting an existing code, rule or regulation constitutes a Type II action under the State Environmental Quality Review Act ("SEQRA"), and thus, does not require a SEQRA review.[1]

III. Legal Basis for ZBA Authority

Before turning to the decision appealed from and the merits of this appeal, it is appropriate to briefly discuss our authority and our task in this review pursuant to the applicable laws.

1. Zoning Law

Under the Town of LaGrange Zoning Code, we, the Town Zoning Board of Appeals ("ZBA") have the powers and prescribed by the State Town Law, in addition to other powers prescribed by Article IX, Chapter 240 of the Zoning Code of the Town.[2] One such additional power is the power of interpretation. "The Zoning Board of Appeals shall, upon appeal from a decision by an administrative official, decide any question involving the interpretation of any provision of this chapter."[3] The Town of LaGrange Zoning Code provides that we have the power and authority to decide any question involving the interpretation of any provision of the Zoning Code.

2. Authority to Interpret Zoning Law

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[1] 6 NYCRR 617.5(c)(31).

[2] Town of LaGrange Zoning Code §240-92.

[3] Town of LaGrange Zoning Code §240-92(D)

2.7. We determine further that, under Section 240-85(C) of the Zoning Code, the Appellant's business complies with the requirements of the Zoning Code and that no reasonable discretionary basis exists for requiring the Appellant to obtain Project Development Plan approval pursuant to that Section.

2.8. We determine further that the Appellant is entitled to a Use Permit pursuant to Code Section 240-85. We determine further that, upon filing the requisite application form(s) and paying the application fee, we order the Building Inspector to issue a Use Permit to the Appellant.

Section 3. It is so ordered in accordance with the foregoing.

Motion to approve resolution by: Paul Bisceglia

Seconded by: Mark Christenson

ZBA Vote

Roll Call	In favor	Against	Abstain	
Paul Bisceglia, Chairman	aye			
Nancy Swanson, Member	aye			
Christan Rohrbach, Member	aye			
Mark Christenson, Member	aye			
Sandy Lane, Member	aye			
Leana Cropp, Alternate				present

Motion passes.

Dated: July 7, 2014
LaGrange, New York

Town of LaGrange Zoning Board of Appeals

Filing: This Resolution and the attached Decision of the Board was filed with Town of LaGrange Town Clerk on July 9th, 2014, by SUSAN QUIGLEY, ZBA Secretary

Copies of this Resolution and the attached Decision of the Board were sent or distributed to:

Mr. Frank Redl, Groomingdales Doggie Day Care & Salon, LLC, Appellant
Kenneth McLaughlin, Town of LaGrange Building Inspector
Mr. Alan Bell, Town Supervisor, Town of LaGrange
Ms. Wanda Livigni, Administrator of Public Works, Town of LaGrange

RECEIVED
JUL 09 2014
LAGRANGE TOWN CLERK