

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, June 1, 2015 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, Sandy Lane, Christian Rohrbach, and Leana Cropp were present. Mark Christenson was absent. John Lyons Esq. of the firm of Grant & Lyons was also present.

Mr. Rochrbach made a motion to accept the minutes of May 4, 2015 as corrected. Ms. Swanson seconded and the motion carried unanimously.

OLD BUSINESS:

12-14-03 USE VARIANCE: DUTCHESS PROVISIONS (OWNER ALAN LEHIGH OF 3 DAUGHTERS HOLDING CO. LLC) 141 DALEY ROAD, POUGHKEEPSIE Grid No. 6259-02-897882

Seeking a use variance in order to permit warehousing and storage of six commercial vehicles in an RFD (residential flexible density) zoning district. Chapter 240-27 Schedule of Permitted Uses & Special Use Permits does not permit warehousing in an RFD zoning district.

Mr. Lyons said that at the last meeting the board had an opportunity to discuss the proposal with the applicant. As a result of discussions with the board, Mr. Lyons was instructed to write a decision for the board embodying the findings of fact and the conclusions which the board has drawn from the testimony and information that they have received. Mr. Lyons' firm has put together a draft decision that was circulated to the board members by email the previous week. They have also prepared a draft resolution adopting the draft decision for the board's consideration. They also prepared a sample completed Short Form EAF part 2 and part 3 for the board to take a look at.

Mr. Lyons said that at the last meeting Mr. Bisceglia had requested certain information that the applicant had put into evidence he submitted to the board on letterhead and he believed that was done.

Mr. Lyons said he had been in individual communication with some of the board members after the drafts were circulated. Subsequently some changes were made to the drafts based on the comments that were received and he had updated versions of those documents to hand out to the board members that night.

Mr. Lyons explained that the board needed to complete the SEQR review by going through Part 2 of the Short EAF and completing Part 3. The board also needs to close the public hearing and discuss the draft decision which should then be put to a vote. Also there is a draft resolution which covers completion, closing of the public hearing and adoption of the decision.

Mr. Lyons handed out a sample Short Form EAF parts 2 and 3. Page 1 has the boxes that the lead agency is supposed to ask. On the back is part 3 and that sets forth the explanation of their decision. Mr. Lyons acknowledged that the board had received the revised draft resolution and decision which incorporates the changes that were made between the end of

the week before and that day based on the comments that had been received from the board members.

Mr. Lyons suggested that the next order of business would be to re-open the public hearing in case the applicant had further information to present, and then close the public hearing. The board could then move on to the rest of the business that needed to be taken care of.

Mr. Bisceglia made a motion to re-open the public hearing. Mr. Rohrbach seconded and the motion carried unanimously.

Mr. Mark Day, P.E. of Day Engineering presented a plot plan of the property. He said no amendments had been made to the plan since they had been before the board at the last meeting. Mr. Day explained that the property is located on Daley Road, bounded by the Rail Trail to the east, and Ben Ciccone's property to the south. There are residential properties across the street. The applicant is seeking a use variance to park additional vehicles on the property in lieu of the landscaping business that was there before. Mr. Day said he had nothing further to present to the board.

There being no further comments from the public, Mr. Bisceglia made a motion to close the public hearing. Mr. Rohrbach seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

The board then addressed the SEQRA document. Mr. Lyons explained that the board had to answer the 11 questions on part 2 of the document and then complete part 3. In the draft that Mr. Lyons had submitted to the board the box for "No" had been checked for all the questions that were asked. He also completed part 3 on the back of the document because it was important to provide an explanation as to what had been looked into with regard to the environmental impacts of the application, especially with regard to character of the neighborhood and the findings that had been made, particularly with regard to their perception that the proposed use would be less intense than the use that is presently on the site. Also on the back was mention of the removal of the salt shed and the salt that will accompany Mr. Lehigh's cessation of his operation on that site. This would possibly be a positive environmental impact to having that material off the site and away from the stream. There were some other things that were discussed during the course of the board's deliberations.

Ms. Swanson wanted to discuss how the applicant had filled out part 1. She referred to Question #2 which stated no further approvals necessary. Ms. Swanson said at the last meeting they discussed a site plan or use permit possibly being needed. Mr. Lyons said that at the very least it should be indicated that a use permit is required. Whether a site plan is needed or not will be up to the Building Inspector. Ms. Swanson said on Question #3 it calls for a total acreage and it mentions contiguous properties owned by the applicant or project sponsor and the property to the north is owned by Mr. Lehigh as well. Mr. Lyons said Dutchess Provisions is the applicant and they need the authority of Mr. Lehigh as the property owner in order to make the application. Ms. Swanson said in the decision he referred to an application by Steven Leonard and Alan Lehigh. Mr. Lyons said that will need to be clarified. Mr. Lyons said the object of the question was aimed at the idea of the possibility of the two properties being subsequently used for the project going forward. Since

the use variance will apply only to this property, he thought it was OK to list the area of just that property.

Ms. Swanson referred to all land uses. She said if she had been filling out the document she would have added park land for the rail trail and for the vicinity she would have also checked agriculture as there is a large farm on Maloney Road. She would possibly also have checked rural for that area.

Ms. Swanson disagreed with the "Yes" answer for #6. Also, the board had not discussed the energy code requirements (#9) so she did not know how they could say they met all the code requirements. The same thing for #12 archeological sensitive area that has not been discussed. For #14, they identified the habitat type as forest, they left off wetland and on the previous land use where there was an opportunity to check off forest, they did not, which Ms. Swanson thought was inconsistent. For #15 there has been no discussion of any animal habitats being threatened or endangered but they did not cite any studies of their property. Ms. Swanson did not find that answer acceptable. Mr. Lyons said a study would not be done in every case. He said they could ask the applicant if they checked with the DEC data base. The environmental mapper is supposed to provide answers to some of those questions. Mr. Lyons said he put in the address for that site and the environmental mapper answered no to both of those questions in #12. It answered no to question #7, whether it is listed in a state critical environment area.

Mr. Bisceglia said, because of the questions that Ms. Swanson brought up, should that be discussed now as a board so that they can agree that these answers are correct in order to accept the Short Form as complete. Mr. Lyons said they could go through and make a decision amongst themselves about what items need to be changed based on their knowledge of the record. The official Short Form will then reflect the correct answers. Mr. Bisceglia said on the Part 1, if the answers are yes instead of no, what kind of impact is that going to have. Mr. Lyons said they may be changing the information that is on there but it may not have a significant impact. That is up to the board to decide on Part 2. Ms. Swanson asked if it is changed, how is that reflected in the record. Mr. Lyons said there would be a notation in the minutes that there were changes made in the form. Mr. Lyons added that that is normally done. They are not obligated to accept the information that is provided by the applicant without questioning it. Mr. Lyons said Ms. Swanson has raised a number of changes that she would like to see on Part 1 and as a board they need to make decisions as to whether they want to see those changes reflected.

Mr. Bisceglia said they should go through it. On # 4 Ms. Swanson had said they only checked Commercial and Residential. Ms. Swanson wanted Parkland checked as well which he agreed with because even though the rail trail came after the fact, it is part of the community. Ms. Swanson also wanted to add rural and agriculture because of the farm on Maloney Road. All the board members agreed with this.

Ms. Swanson said they should add a use permit to #2 pursuant to the Town of LaGrange zoning law.

For #6, Ms. Swanson said the property is consistent with the Ciccone property but not with the rest of the properties, so she said the answer should be no. The other board members were not concerned either way, so the answer was kept as "yes".

For #12, after discussion Mr. Bisceglia felt the "no" answer was correct.

For #9, concerning the energy code requirements, Mr. Bisceglia said when the building was built there were certain energy code regulations to follow. Mr. Day said the building was built in 1998. He said they are not proposing any buildings, therefore the energy code would not apply.

For #14, the applicant had only checked "forest" and "suburban". There was discussion about whether "wetland" should have been checked. Mr. Rohrbach said the map that was provided indicated that there was a 20 foot buffer line from the stream.

There were no other issues concerning Part 1.

The board then reviewed the Short Environmental Assessment Form Part 2:

#1, Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? The board agreed the answer was correct.

#2, Will the proposed action result in a change in the use or intensity of use of land? The board agreed the answer was correct.

#3, Will the proposed action impair the character or quality of the existing community? Mr. Lyons said the board had had discussions about this quite extensively because this is one of the questions that they have to resolve as part of the use variance criteria. Ms. Swanson said they seemed to be ignoring the fact that Lehigh Landscaping is no longer there. Mr. Bisceglia said that before he moved out there had been no complaints. He operated within the code. Mr. Lyons said they have looked at the fact that historically there has been a history of mixed residential/commercial use, even if just a sprinkling, for quite some time. This particular lot has been in commercial use for 19 years. They also talked about just a few employees and what will be taking place there is mostly administrative indoors. The trucks are merely being parked there. There will be no customers coming to the site. Mr. Rohrbach said they have to compare this, not necessarily to the current moment in time, but the allowed use on that property is the same allowed use that they have had for 19 years which was significantly more intense. Mr. Rohrbach thought it was appropriate to compare it to that previous use.

#4, Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? Mr. Lyons said he did not believe they had a critical environmental area in the area of the application.

#5, Will the proposed action result in an adverse change in the existing level of traffic or affect the existing infrastructure for mass transit, biking or walkway? The board agreed with the "no" answer.

#6, Will the proposed action cause an increase in the use of energy as it fails to incorporate reasonably available energy conservation or renewable energy opportunities? Mr. Lyons said this question is usually designed for a much larger application. As Mr. Day pointed out, there is no new construction associated with the change in use. There might be some increase in power usage. The changes that are contemplated by a change of use in this scale are not contemplated by this question.

#7, *Will the proposed action impact existing public/private water supplies and public/private wastewater treatment utilities?* Mr. Lyons said this is a function of scale.

#8, *Will the proposed action impair the character or quality of important historic, archeological, architectural or aesthetic resources?* Mr. Bisceglia said no.

#9, *Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?* Mr. Bisceglia said this would not be an impact.

#10, *Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?* No.

#11, *Will the proposed action create a hazard to environmental resources or human health?* No.

Mr. Lyons said that completes Part 2. He asked the board members to take a look at the proposed Part 3. Mr. Lyons said this language is lifted from the Resolution where there is discussion on the SEQR determination.

Ms. Swanson proposed changing “the present landscaping use” to “the previous landscaping use”. Mr. Rohrbach said he did not see a need to change that because it is a current allowed use. Ms. Lane said that use will be gone. Mr. Lyons said the landscaping use will be leaving before Dutchess Provisions will start operations.

Mr. Bisceglia referred to the statement about the eventual removal of the salt shed and the salt. He asked what “eventual” meant. Mr. Lyons said his understanding at the time the resolution was granted was that the salt shed was still there. Mr. Bisceglia asked if the shed was the issue or the contents of the shed. If it is the salt, what is the issue if the shed remains? Ms. Lane said the shed is for the salt. Mr. Lyons said one of the conditions that is written into the draft is that Lehigh Landscaping is going to have to cease the use of the property because in LaGrange you can't have two uses on one lot. Mr. Lehigh cannot be stockpiling material on the property. Mr. Bisceglia said what if Dutchess Provisions wants to put something in the shed. It was determined that the shed is 20' x 18'. Mr. Day said Dutchess Provisions would not be using it and it is on the other parcel. The salt shed is proposed to be relocated to Mr. Lehigh's site in East Fishkill. Ms. Lane said she wants it documented that the shed will be gone.

Mr. Lyons asked if the board wanted to make changes to the document before the chairman signs it. Mr. Bisceglia said a small change could be made stating that the shed will be removed at the time that the present use ceases and the new use begins. Mr. Lyons asked if that was addressed by “eventually”. Mr. Bisceglia said no.

Ms. Swanson said she thought it was mentioned in the Decision and the Resolution that it was to be removed.

Mr. Bisceglia said if it is in the Resolution, then it is not necessary to change the EAF.

Mr. Lyons said the EAF would be submitted to the board as is. The board agreed.

Mr. Lyons said his next suggestion would be to discuss the draft Decision, and if that is acceptable then the last piece is to go through the Resolution.

Mr. Rohrbach said he had sent a note to Mr. Lyons the previous Friday raising some additional questions concerning his heightened concern about the dual use of the property as well as the environmental concern. Upon receiving the Decision and the Resolution and reviewing them thoroughly, he is personally now satisfied that his concerns are addressed in these documents. He did not know if any other board members had concerns.

Mr. Bisceglia said he thought some of his comments were well taken. He reviewed the documents and he did not have any problems with them. Ms. Swanson said she was concerned about similar things. She wondered if the current code would apply to this property and at some point would it be examined for compliance with the code. For example, activity in the 20 foot buffer and any leaching into the stream. Mr. Rohrbach said that was part of the reason why he had raised his concerns because he did not know if the board could place certain restrictions or address some of those things through actions that the board takes. He believed that Mr. Lyons indicated that the board can only take actions relative to the parcel that they are addressing. That does not mean that the town or the county can't themselves take certain enforcement actions if that is appropriate. They can do the appropriate inspections based on their decision to stop by once a month or once a year or they get a complaint from neighbors. Mr. Lyons said he did not think it was proper for the board to attach those as conditions as they are outside the jurisdiction of the board. However, Mr. Lyons said that he presumed that at the time the applicant applies for a use permit from the Building Inspector, those issues would be looked at.

With regard to the Decision, Ms. Swanson had some comments. On page 4 there is a reference to several commercial businesses within the district. She said there had only been a mention of one business, Ben Ciccone. She would like the phrase "several commercial businesses" to be removed. Mr. Rohrbach said he would not have a problem with changing the wording to say "there are other commercial businesses within the district, specifically a large construction yard." There may be others as well but he did not think it measurably changes the meaning of what was said.

Ms. Swanson continued. Also on page 4 at the top of the page, there is a reference to selling to a prospective buyer as if there were some other negotiations going on outside Mr. Leonard's interest and she thought that might give some misleading impression to someone reading this decision. Ms Swanson suggested changing it to "attempting to sell this property".

Ms. Swanson referred to the 5th full paragraph, loading the trucks in the morning hours. She would like it to say "early morning hours".

Ms. Swanson said on page 7, second paragraph from the bottom there was a reference to average assessed value of residential properties. She could not find that in the record. Kim Garrison, an attorney in Mr. Lyons office explained that she got that number from the narrative that was provided by Mark Day.

The board had no other comments to make.

Mr. Lyons suggested that the next step would be to go through the Resolution. Mr. Bisceglia asked if everyone had had a chance to get familiar with the Resolution. They agreed that they had. Mr. Lyons suggested that the action items be read into the record.

Ms. Swanson had a couple of comments concerning the Resolution. She referred to No. 25. It starts out with "We have noted that". She said there was only one testimony about the number of trucks that Lehigh had, which was testified as 29. She said the board never saw the trucks there and never saw the operation so she would prefer that it state: "We heard testimony that" as they have no direct knowledge of it.

Ms. Swanson said that No. 26 stated that the business hours will be nearly normal at most times. She thought that was disingenuous when they had several bits of testimony talking about 5 o'clock in the morning, 6 o'clock and 6:30. She did not consider that normal business hours. Mr. Lyons said the document stated "nearly normal". Ms. Swanson suggested leaving that sentence out. The board was in agreement with that.

Mr. Lyons said the first few pages of the Resolution traced the procedural history of the review and memorializes that for the record. The latter portions of the Resolution beginning in paragraph 23 up through paragraph 28 discusses the board's SEQR determination and the steps they took in connection with the environmental review.

Mr. Lyons then read into the record the action items:

THEREFORE BE IT RESOLVED BY THE TOWN OF LaGRANGE ZONING BOARD OF APPEALS AS FOLLOWS:

Section 1. The Town of LaGrange Zoning Board of Appeals authorizes the Chairman of the Zoning Board of Appeals to execute the full EAF.

Section 2. For the reasons set forth herein, the Town of LaGrange Zoning Board of Appeals determines that the proposed action will not cause any significant adverse environmental impacts, and therefore, the Zoning Board of Appeals wishes to issue a Negative Declaration as its Determination of Significance pursuant to SEQRA. The Zoning Board of Appeals directs the Town Clerk to file a copy of this resolution containing the Negative Declaration in his or her office and that it be accessible to the public.

Section 3. The Zoning Board of Appeals closes the public hearing.

Section 4. The Town of LaGrange Zoning Board of Appeals adopts our written Decision in this matter dated June 1, 2015, a copy of which decision is attached hereto and made a part hereof.

Section 5. Based upon the findings of facts, conclusions of law and reasoning set forth in our Decision, the Town of LaGrange Zoning Board of Appeals determines as follows:

- A. There cannot be a recognized reasonable return of the Property based on any of the present permissible uses of the RFD Zoning District for the Property due to the Property's unique natural features and existing commercial building presently existing on the premises. Mr. Lehigh has successfully demonstrated a "dollar-and-cents" analysis that he would be deprived of all economic use and benefit from the Property without the requested use variance.
- B. The alleged hardship is unique to the Applicants. Most of the other lots in the vicinity of the Property have already been developed for commercial or residential use. Other properties around 141 Daley Road do not have qualities that would require a similar use variance.
- C. The use variance will not alter the character of the RFD Zoning District because it is already improved with a commercial building, and no new buildings will be erected on the Property. There will be no increase in noise or traffic, and, may be less intense than the present use already on the Property.
- D. Mr. Lehigh purchased the property prior to the new zoning regulations and has been operating his business for approximately nineteen years. At the time he purchased the property, some commercial uses were permitted in the zone and it was reasonable for him to expect to sell the Property in the future for another commercial use. Thus, any hardship felt by the Applicants is not self-created.

Section 6. In granting the use variance to the Applicants for the purpose of operating a warehouse and storage use on the Property located at 141 Daley Road, we place the following conditions upon the grant of the variance and state that our intention is that they be strictly enforced with this use variance, and all subsequent warehouse and storage uses for the Property:

- A. Use Limited to a Maximum of Ten (10) Trucks: The maximum number of 2-axle box trucks, delivery vehicles, and other similarly sized vehicles associated with typical warehouse use cannot exceed ten (10) trucks on the Property at any time. This allows for the

Dutchess Provisions business to grow, but places a limit on the impacts of the operation.

- B. Use Must Meet Town of LaGrange Noise Ordinance: Sound levels shall conform to all provisions contained in Chapter 162, Noise, of the LaGrange Code, as amended.
- C. Prohibition of Off-Site Glare and Limits on Site Lighting: No person, firm or corporation using the Property in accordance with this use variance shall be permitted to allow any high-intensity light to cross the boundary line of the lot on which this light source is situated.

All exterior lighting in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties and shall not cause any objectionable glare observable from such streets or properties. No use shall produce glare so as to cause illumination beyond the property boundary at 141 Daley Road.

- D. Prohibition Against Multiple Uses: There shall be one use associated with 141 Daley Road at any given time. This condition requires that Lehigh Lawn and Landscaping will have vacated the Property by the time Dutchess Provisions begins its operations.
- E. Limits on Equipment and Storage: As recommended by Dutchess County Planning, all equipment and storage from Lehigh Lawn and Landscaping shall be removed. Compost and Firewood presently located on 141 Daley Road by Lehigh Lawn and Landscaping shall be removed from the Property before a new use is permitted on the Property.
- F. Prohibition on Meat Processing: No person, firm or corporation using the Property in accordance with this use variance shall be permitted to use the Property for curing, packaging, processing, or cutting of the meat or meat products.

Mr. Lyons asked if that accurately reflected the wishes of the board as they were conveyed to Mr. Lyons at the last meeting. The members of the board said that it does.

Mr. Bisceglia made a motion to adopt the Resolution. Mr. Rohrbach seconded.

Mr. Bisceglia said he did not have anything further to add to the document. He has looked at it thoroughly. He has driven by the area many times and he feels totally confident that this is the right thing to do.

The motion having been made and seconded, the board voted as follows:

Mr. Bisceglia: Yes
Ms. Swanson: No
Ms. Lane: Yes
Mr. Rohrbach: Yes
Ms. Cropp: Yes

The motion carried with 4 ayes and 1 nay. USE VARIANCE GRANTED

Mr. Lyons said he would be making the changes to the documents that the board had discussed and will be sending those to the secretary. The changes to Part 1 of the EAF will be reflected in the minutes.

9-14-03 USE VARIANCE: GARY E. BECK JR., Z3 CONSULTANTS (OWNER, JAMIE TURELL), 275 EMANS ROAD, LAGRANGEVILLE, NEW YORK
Grid No. 6559-01-465994

Seeking a use variance in order to permit light industry in an R-120 zoning district. Chapter 240-27 Schedule of Permitted Uses & Special Use Permits does not permit light industry in an R-120 zoning district. (*Zoning District designation changed pursuant to Town Resolution on September 10, 2014 from R-120 to RLD*)

This application has been adjourned to October 5, 2015 at the request of the applicant

12-14-02 USE VARIANCE (AMENDED): CHRIS NEJAME (OWNER: STEVEN AMES ENTERPRISES LLC), 1820 ROUTE 82, LAGRANGEVILLE, NEW YORK
Grid No. 6559-02-600783

Seeking a Use Variance in order to permit a fast food establishment in an RLD (residential low density) zoning district. Chapter 240-27 Schedule of Permitted Uses & Special Use Permits does not permit fast food establishments in an RLD zoning district.

Chris NeJame was present.

Mr. Bisceglia said the board had requested that the town attorney, who represents the town, not be present. She had, however, sent a letter dated May 4, 2015 to the board which addressed Mr. NeJame's evidence he had submitted to meet the use variance criteria. Mr. NeJame was then provided with a copy of the letter.

Mr. Bisceglia said that, according to the town attorney, the submission was not satisfactory enough. Mr. NeJame said he presented the 10 questions to five people, real estate brokers and two lawyers. He tried to make his responses as palatable as he could. He described the property as being an enigma in the middle of Route 82. He did not know how to get valid information to the board. Mr. Bisceglia explained that these are mandatory items that the board has to go through based on state law. They are trying to gather pertinent information as detailed as possible that can be presented to the board so that they can make a decision, but it has to be information that can be verified. Mr. NeJame said the mortgage and the original purchase price were taken care of with actual validation. Those were tangible items. He referred to one of the 10 questions: The concrete cost to demolish the commercial structure to

a residential structure. The question is, what is the new residential structure going to be? A one family, a two family, a split level, a colonial? He does not know how to answer that question.

Mr. Rohrbach said Mr. NeJame is going into too much "what ifs". The question has to do with if the value of the property is a certain amount, it was purchased for a certain amount, what would be the impact of putting a residence on the property. The board would not impose any thought about any kind of residence and the question would be from the prospective of the current owner, what would be the minimum accepted residence that could provide sufficient value that they could get a return on their investment. If it turns out that what they purchased the property for was in a high market so they have a lot invested they may need to build a mansion on the property to get it back. That factor coming back to the board would help the board to understand.

Mr. NeJame asked what would be the concrete evidence of that. Mr. Rohrbach said he could get some estimates from contractors or even from real estate agents in terms of what would be the approximate cost to demolish the building that is there now and how much would it cost to put a new one up.

Mr. NeJame asked if that was the opinion of the board. Ms. Swanson said it was a step in the right direction. Mr. Bisceglia said it has to be presented in writing and it has to be by someone, for example a contractor who has been established in the area so that they board can recognize that as a creditable source. Mr. Bisceglia said it is difficult for a specific reason.

Mr. NeJame said he understands but there is a line that goes from difficult to impossible. He thought there was no effort in those questions. Mr. Bisceglia said he might want to hire his own attorney who could then talk to the town attorney or do some research on his behalf that would give him the direction he needs.

Ms. Swanson suggested that if Mr. NeJame does look for an attorney, he should get one who does land use because this is not a common thing.

Mr. Bisceglia made a motion to adjourn the NeJame application to the July 6, 2015 meeting. Mr. Rohrbach seconded and the motion carried unanimously. APPLICATION
ADJOURNED TO JULY 6, 2015

05-15-02 AREA VARIANCE: APPLICANT RALPH GASTIN (OWNER JOSEPH WILLIAMS), 14 VERVALEN DRIVE, POUGHKEEPSIE, NEW YORK Grid No. 6461-03-229095

Seeking relief of 9' from the right of way of Vervalen Drive in order to construct a 15' x 21'7" garage addition with a proposed setback of 46 feet. §240-28 Schedule B requires a minimum setback from the r.o.w. of a town road of 55'.

Ralph Gastin was present to represent the application. Mr. Gastin said he was asking for an area variance on behalf of Mr. & Mrs. Joseph Williams of 14 Vervalen Drive. He was hired by Mr. & Mrs. Williams to do some renovation work in their house. Part of the renovation is to convert 15 feet of their garage into living space. That would leave 6 feet of garage and he

would like to add 15 feet on the outside so they will have the same garage when they are done. This will mean an encroachment into the front property line of 9 feet.

Mr. Bisceglia asked if all the adjoining property owners had been notified. The secretary said they had been notified.

Mr. Gastin showed the board on the survey where the addition would be going.

Ms. Swanson said she had looked at the property and she had no concerns. Mr. Rohrbach said he had also looked at the property. He said his impression was that the front of the garage would be moved out a few feet. He asked how the addition would be relative to an existing basketball hoop. Mr. Gastin said it was approximately in the same area as the basketball hoop. In that case, Mr. Rohrbach said he did not feel it would be a great impact.

Mr. Bisceglia asked about the topography. Mr. Gastin said there is a flat section in the driveway but then it climbs up. Ms. Swanson said in the back of the house it slopes way down. Mr. Bisceglia said he assumed then, that the area that the garage would be going in would not change the topography. Mr. Gastin agreed. He said the well and septic are in the rear.

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

There being no comments from the public, Mr. Bisceglia made a motion to close the public hearing. Mr. Rohrbach seconded and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Bisceglia then addressed the Record of Findings:

Character of the Neighborhood and Detriment to Nearby Properties

It is a nice proposal which will enhance the neighborhood. The board members agreed that it would not be a great impact on the neighborhood.

Alternative Methods for Achieving Benefit Sought by Applicant

The applicant could come up with a different plan but their proposal made the most sense.

Substantiality of Variance Requested

Seeking 9 feet of relief is not a substantial variance. The garage will still be 46' back from the road. It will be building on what is currently asphalt

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

Because of the location on the site where the garage will be placed, it will not affect the stormwater.

Self-Creation of Difficulty

This is self-created but the position of the house does not allow the garage to be placed in a different location and still function well.

Based on the Record of Findings Mr. Bisceglia made a motion to grant Mr. Gastin relief of 9' from the right of way of Vervalen Drive in order to construct a garage with a setback of 46 feet. Ms. Lane seconded and the motion carried unanimously. AREA VARIANCE GRANTED

NEW BUSINESS:

06-15-01 AREA VARIANCE: PHILIP MESSINA, 15 KUTNER ROAD,
LAGRANGEVILLE, NEW YORK Grid No. 6561-03-437357

Seeking relief of 10 feet from the side property line in order to construct a 12' x 14' shed with a setback of 30 feet. §240-28 Schedule B requires a minimum side yard setback of 40'.

Mr. Messina was present. Mr. Messina said he is seeking a variance of 10 feet from the property line in order to construct a pre-manufactured shed on the property. Mr. Messina said he had just surveyed the property and the survey stakes were in the ground.

Mr. Bisceglia asked if all adjoining property owners had been notified. The secretary said they had. She said one comment had been received from Fred Policastri of 19 Kutner Road who said he had no objections to the variance as per the letter he had received.

Ms. Swanson asked if that was the neighbor to the south. Mr. Messina said if you come up the driveway, his property is on the right side, closest to where the shed will be. Mr. Rohrbach asked if the sketch he showed Mr. Policastri was the shed that will be constructed. Mr. Messina said yes, it was. It is a pre-manufactured shed from Bay Horse. He couldn't get an actual picture of it because they are going to match the siding and roof to his house. Mr. Bisceglia asked what the pitch of the roof was. Mr. Messina thought it was 6/12. He said his tractor is 14' long and the shed is 12' x 14'. He said the actual measurement from the property line is 30 feet, not 28 feet. Ms. Swanson asked which way was the shed going to face. Mr. Messina said it would face the driveway. Ms. Swanson asked what kind of walkway or driveway would be coming up to it. Mr. Messina said it has a ramp which is a separate piece, that goes up to the front door. Mr. Bisceglia noted that this is a movable shed. He asked where the well and septic are. Mr. Messina showed on the plan where the well and septic are located.

Ms. Swanson asked if Kutner Road is a private road. Mr. Messina said it was.

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

There being no comments from the public, Mr. Bisceglia made a motion to close the public hearing. Ms. Lane seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Ms. Swanson mentioned that the property is very steep, and Mr. Bisceglia added that it is very treed as well.

Mr. Bisceglia then addressed the Record of Findings:

Character of the Neighborhood and Detriment to Nearby Properties

This falls within the character of the neighborhood and there is no detriment to nearby properties. The shed will match the house. No negative comments had been received from the adjacent property owners.

Alternative Methods for Achieving Benefit Sought by Applicant

This is a large piece of property but because of the topography this appears to be best location

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

No new trees will be removed. The shed will not have a foundation so there will be no environmental conditions.

Self-Creation of Difficulty

It is self-created but because of the layout of the land, and the location of the house and access, this makes the most sense.

Based upon the Record of Findings, Mr. Bisceglia made a motion to grant Mr. Messina relief of 10 feet from the side property line in order to construct a 12' x 14' shed with a setback of 30 feet. Ms. Lane seconded and the motion carried unanimously. AREA VARIANCE GRANTED

06-15-02 AREA VARIANCE: MARLAINA JUNIOR, 119 ROTHENBURGH ROAD, TOWN OF LAGRANGE, NEW YORK Grid No. 6260-02-629926

Seeking relief of 1 foot from the side yard setback in order to construct a 6' x 7' addition with a setback of 14' from the property line. §240-29 G.(1) requires a minimum side yard setback of 15'.

Marlaina Junior was present. Ms. Junior explained that she is putting in a 6' x 7' bathroom addition that will have a setback of 14 feet from the property line. She is seeking relief of one foot.

Mr. Bisceglia asked if the neighboring property owners had been notified. The secretary said they had.

Ms. Swanson said on the survey map there was a notation about replacing an above ground pool. Ms. Junior said they replaced their pool a while back.

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

There being no comments from the public, Mr. Bisceglia made a motion to close the public hearing. Mr. Rohrbach seconded and the motion carried unanimously. PUBLIC HEARING CLOSED

Mr. Bisceglia asked if the well and /or septic were an issue. Ms. Junior said no. Ms. Lane asked if the addition would match the house. Ms. Junior said it would match the siding and the roof.

Mr. Bisceglia then addressed the Record of Findings:

Character of the Neighborhood and Detriment to Nearby Properties

This proposal fits within the character of the neighborhood. This is only a small addition.

Alternative Methods for Achieving Benefit Sought by Applicant

This is the best location for the bathroom addition, off the bedroom.

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

This is only a small addition and there will be no impact on the physical or environmental conditions in the neighborhood.

Self-Creation of Difficulty

This is self-created but they are only seeking one foot of relief and there have been no objections from the neighbors.

Based on the Record of Findings, Mr. Bisceglia made a motion to grant Ms. Junior relief of 1 foot from the side property line in order to construct a 6' x 7' bathroom addition with a setback of 14 feet. Ms. Lane seconded and the motion carried unanimously. AREA VARIANCE GRANTED

06-15-03 AREA VARIANCE: VINCENT CANNIZZARO, 23 STRINGHAM ROAD, TOWN OF LAGRANGE, NEW YORK Grid No. 6460-03-416119

Seeking relief of 10 feet from the rear yard property line in order to construct a 26'5" x 12'5" inground pool with a setback of 20'. §240-28 Schedule B requires a minimum rear yard setback of 30'.

Vincent Cannizzaro was present. He explained that he was seeking a variance of 10 feet from the rear property line in order to construct an inground pool with a setback of 20 feet. The code requires 30 feet.

Mr. Bisceglia asked if all the neighboring property owners had been notified. The secretary said they had been notified.

The board had received a written comment from Peter Turoff of 100 Memory Trail stating: *Dear Paul, My wife and I can see no reason to say no to this request. We have no problem approving variance. It will not affect anyone. Regards, Peter Turoff.*

Ms. Swanson said when she was visiting the site that day there was a pink tape. She asked what it was for. Mr. Cannizzaro said he did some marking to depict where the fence would be. Ms. Swanson asked if it would go into the wetland buffer. Mr. Cannizzaro said he has an elevation certificate and he had to demonstrate that he would be outside the 100 year flood plain. They also had to prove it again for FEMA. Mr. Cannizzaro said the wetlands are even further away.

Mr. Bisceglia asked if trees would have to come down. Mr. Cannizzaro said no trees would have to come down. He said the topography was flat and starts to dip down past the pink tape. The property is 2.1 acres.

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

There being no comments from the public hearing Mr. Bisceglia made a motion to close the public hearing. Ms. Lane seconded and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Bisceglia then addressed the Record of Findings:

Character of the Neighborhood and Detriment to Nearby Properties

The proposed pool fits into the character of the neighborhood.

Alternative Methods for Achieving Benefit Sought by Applicant

There is not an alternative method for achieving the benefit.

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

There should not be any physical or environmental conditions in the neighborhood. The pool will be away from the floodplain and the buffer of the wetland.

Self-Creation of Difficulty

This is self-created but the addition of the pool is a nice feature.

Ms. Lane added that there is no house next to the rear property line. Mr. Bisceglia said the property is flat and he is staying away from the floodplain and wetland buffer.

Based on the Record of Findings, Mr. Bisceglia made a motion to grant Mr. Cannizzaro relief of 10 feet from the rear property line in order to construct a 26'5" x 12'5" inground pool with a setback of 20 feet. Ms. Lane seconded and the motion carried unanimously. AREA VARIANCE GRANTED.

Mr. Bisceglia made a motion to close the meeting at 9:25 p.m. Ms. Lane seconded and the motion carried unanimously.

Respectfully submitted

Susan Quigley, Secretary

**Short Environmental Assessment Form
Part 2 - Impact Assessment**

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Agency Use Only [If applicable]	
Project:	Dutchess Provisions
Date:	June 01, 2015

**Short Environmental Assessment Form
Part 3 Determination of Significance**

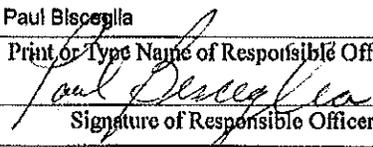
For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

The present landscaping use of the property involves significant outdoor activity involving truck traffic, heavy equipment and the outdoor storage of stockpiled materials. It also involves the storage of sale on-site near the stream. In Winter, when snowplowing, sanding and salting is done, the site can be used at hours beyond normal business hours, as weather conditions require.

As part of our analysis of the of the impacts to the character of the neighborhood, we noted that the proposed use will be less intense in terms of impacts to the physical property and to surrounding properties. The business hours will be nearly normal at most times. The administrative activities and parking of trucks on the property will be less intense than the present landscaping use and is less apt to have off-site impacts. Further, this change in use will require the eventual removal of the salt shed and the salt, which should represent a positive change for the environmental impacts to the property and especially the nearby stream. The trucks will be leaving and entering the property only at the beginning and end of the day, which should be less traffic in terms of ingress and egress than the landscaping business. The new business will not require any new building or disturbance of the site. There will be only one or two staff members working at the site on the administration of the business, and all of the business conducted on-site will be largely done indoors, except for the unloading of deliveries. For all these reasons, we determine that the proposed use will be lesser in terms of impact than the present use in terms of both intensity of use and impact to the physical environment and surrounding area.

In addition, we have formulated a list of conditions of approval which will control the scope of the use with regard to, among other things, light, glare, noise, multiple uses, and maximum trucks permitted on-site.

In making this Determination of Significance, we reviewed Part 1 and tried to take a "hard look" at the potential adverse environmental impacts of this action. In doing so, we did not identify any significant adverse environmental impacts that would be caused by this proposed use variance or which could not be mitigated by appropriate conditions designed to neutralize potential off-site impacts which could be attached to our approval of the variance.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input checked="" type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
Town of LaGrange Zoning Board of Appeals	June 01, 2015
Name of Lead Agency	Date
Paul Bisceglia	Chairman, Town of LaGrange ZBA
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
	
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT FORM

**Resolution of
the Town of LaGrange Zoning Board of Appeals**

Approving the Use Variance Application for Dutchess Provisions, Inc.

Date: June 1, 2015

Matter: Use Variance to conduct a warehouse and indoor storage for a meat distribution company for administrative duties and deliveries on the Property site, located in the RFD Residential Flexible-Density.

Property: 141 Daley Road, LaGrange, New York

WHEREAS:

1. The Zoning Board of Appeals received a use variance application dated November 12, 2014, from Steven Leonard, owner of Dutchess Provisions, Inc. ("Dutchess Provisions") and Alan Lehigh, owner of Lehigh Lawn and Landscaping (hereinafter referred to as "The Applicants"), to operate a warehouse and indoor storage facility, with six to seven commercial box truck vehicles on site for distribution of products located at 141 Daley Road in the Town of LaGrange, with the Tax Grid Number 133400-6259-02-897882-0000 (hereinafter referred to as "The Property"). The Property consists of 1.35 acres.
2. On November 12, 2014, the Applicants submitted a long Environmental Assessment Form (EAF). Sections A, B, C, F, and G were completed on Part 1 of the EAF. Subsequently, the Applicant submitted a Short EAF, as requested by the Town of LaGrange Zoning Board of Appeals.
3. Prior to applying for a Use Variance, the Applicants submitted a Commercial Inquiry Request for Information to the Town of LaGrange Building Inspector with respect to the Property, which was later amended on October 2, 2014. According to the Statement of Use, the present owner, Mr. Lehigh, wished to lease the Property to Dutchess Provisions, a Boar's Head Cold Cut Distributor, who will park, load and unload commercial delivery trucks on the site.
4. Warehousing use is not a permitted use in the RFD Residential Flexible-Density ("RFD") Zoning District under the Town of LaGrange Zoning Law Section 240-27, Schedule A.
5. The Town of LaGrange Building Inspector advised the Applicants that it was not considered a routine change of use. Because of this, and the fact that the proposed use is not permitted in the RFD Zoning District, the Building Inspector recommended that they seek a use variance to operate a commercial business at this location.
6. The Property is improved by a commercial building, presently owned by 3 Daughters Holding Co, LLC, and occupied by Lehigh Landscaping Facility, a horticultural commercial business, which is permitted under RFD Residential Flexible-Density Zoning District. Lehigh Landscaping Facility operated under an area variance, permitting it to operate on 1.35 acres instead of 5 acres. As of 2006, following a rezoning change to large lot residential use, the landscaping commercial business is non-conforming.

7. The Property is not currently in use. According to the Narrative for Justification of the Boar's Head ZBA Application, dated November 19, 2014, submitted by the Applicant, Lehigh Landscaping Facility has been unable to find a suitable tenant to occupy the location.
8. The RFD Zoning District is primarily residential, interspersed with some open space and undeveloped lands.
9. Under the Town of LaGrange Zoning Law Section 240-92(B)(1), the Zoning Board of Appeals has the power to grant use variances authorizing a use of land which otherwise would not be allowed under the Town of LaGrange Zoning Law.
10. Under Town of LaGrange Zoning Law Section 240-85, a use permit is required before the establishment or change of any nonresidential use or activity, including the change of the owner, operator or name of any business, trade office, industry, institution or other nonresidential activity.
11. According to the Town of LaGrange Zoning Law Section 240-92(B)(2), no use variance shall be granted by the Zoning Board of Appeals without a showing by the Applicants that the applicable regulations and restrictions imposed by the Zoning Law causes unnecessary hardship to the Applicant. In order to prove unnecessary hardship, the Applicant must demonstrate the following:
 - (A) That under the applicable regulations and restrictions imposed by this chapter the applicant is deprived of all economic use and benefit from the property in question, with proof of financial evidence;
 - (B) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
 - (C) That the requested use variance, if granted, will not alter the essential character of the district or neighborhood;
 - (D) That the alleged hardship has not been self-created.
12. On November 18, 2014, the application for a use variance was referred to the Dutchess County Department of Planning and Development, pursuant to General Municipal Law, Article 12(B), Sections 239(l) and (m), and in accordance with the Town of LaGrange Zoning Law Section 240-93(D).
13. A Notice of a Public Hearing was published in the Poughkeepsie Journal on November 21, 2014.
14. The public hearing was opened on December 1, 2014 and held at 120 Stringham Road at 7:30 p.m. Written comments were received by several property owners located within 500 feet of the Property at 141 Daley Road.
15. During the time that the public hearing was opened, several Zoning Board of Appeals members individually visited the site.

16. On December 3, 2014, the Dutchess County Department of Planning and Development reviewed the application and issued a memo setting forth its opinion. That opinion noted that materials and equipment from the operations were stored off-site on County-owned land. The Dutchess County Department of Planning and Development recommended that the Applicants must remove all materials and equipment from the County-owned land before the Zoning Board of Appeals could grant the use variance. No other substantive comments were made.
17. On April 6, 2015, the Zoning Board of Appeals classified this action as a Unlisted Action under SEQRA. Given that the application is an Unlisted Action, the Zoning Board of Appeals has: (a) opted to declare itself to be lead agency for the purposes of the SEQRA environmental review of the proposed use variance; and (b) opted to conduct an uncoordinated review of this action.
18. On April 15, 2015, the Zoning Board of Appeals sent notice to the Town of LaGrange that the Zoning Board of Appeals wished to establish themselves as Lead Agency for the environmental review of this Application.
19. On April 16, 2015, the Town of LaGrange Planning Board, at their regular meeting, determined that they had no objections to the Zoning Board of Appeals serving as Lead Agency for the environmental review of this Application. The Planning Board attached several comments for items that should be addressed during the SEQRA review process.
20. On April 30, 2015, the Applicant supplied financial data and addressed the questions and comments as requested by the Town of LaGrange Zoning Board of Appeals and the Town of LaGrange Planning Board.
21. On May 4, 2015, the Zoning Board of Appeals asked the Applicant several questions with regards to the status of the current property owner's, Mr. Lehigh, intent in the event the use variance was granted to Dutchess Provisions. The comments raised questions whether Mr. Lehigh or any part of his business were to stay on the Property if the area variance were granted to Dutchess Provisions.
22. The Zoning Board of Appeals reviewed Part 1 of the SEQRA Environmental Assessment Form (EAF) submitted by the Applicant.
23. During the conduct of its SEQRA environmental review of the proposed action, the Zoning Board of Appeals considered: (a) the whole action and criteria set forth in Section 617.7(c) of the SEQRA Regulations; (b) the EAF and all other information submitted by the Applicant; and (c) public input. The Zoning Board of Appeals identified the relevant areas of concern and took the required "hard look" at them.
24. During the course of our review, we visited this site, studied the site conditions and surrounding area and questioned the Applicants extensively on the nature and scope of the intended use of the Property should the requested use variance be granted.

25. We have heard testimony that the present landscaping use of the property involves significant outdoor activity involving truck traffic, heavy equipment and the outdoor storage of stockpiled materials. It also involves the storage of sale on-site near the stream. In Winter, when snowplowing, sanding and salting is done, the site can be used at hours beyond normal business hours, as weather conditions require.
26. As part of our analysis of the of the impacts to the character of the neighborhood, we noted that the proposed use will be less intense in terms of impacts to the physical property and to surrounding properties. The administrative activities and parking of trucks on the property will be less intense than the present landscaping use and is less apt to have off-site impacts. Further, this change in use will require the eventual removal of the salt shed and the salt, which should represent a positive change for the environmental impacts to the property and especially the nearby stream. The trucks will be leaving and entering the property only at the beginning and end of the day, which should be less traffic in terms of ingress and egress than the landscaping business. The new business will not require any new building or disturbance of the site. There will be only one or two staff members working at the site on the administration of the business, and all of the business conducted on-site will be largely done indoors, except for the unloading of deliveries. For all these reasons, we determine that the proposed use will be lesser in terms of impact than the present use in terms of both intensity of use and impact to the physical environment and surrounding area.
27. In addition, we have formulated a list of conditions which will control the scope of the use with regard to, among other things, light, glare, noise, multiple uses, and maximum trucks permitted on-site.
28. In making our Determination of Significance, we reviewed Part 1 of the EAF and completed EAF Part 2. In taking the "hard look", we did not identify any significant adverse environmental impacts that would be caused by this proposed use variance or which could not be mitigated by appropriate conditions designed to neutralize potential off-site impacts which could be attached to our approval of the variance.
29. The ZBA has carefully and deliberately considered the unnecessary hardship by the applicable regulations and restrictions imposed by the RFD Zoning District as it relates to the Property at 141 Daley Road, as addressed by the Applicants, as well as considered the necessary four factors set forth in Zoning Law Section 240-92(B)(2), the written and oral testimony and evidence offered by the Applicants, and written comments of the public over the course of several sessions of the public hearing, in order to decide whether to grant the use variance to the Applicants or deny the use variance.
30. The ZBA has reviewed the applicable portions of the Town of LaGrange Zoning law and has consulted with its attorney.

BASED ON THE FOREGOING, NOW,

THEREFORE BE IT RESOLVED BY THE TOWN OF LAGRANGE ZONING BOARD OF APPEALS AS FOLLOWS:

- Section 1. The Town of LaGrange Zoning Board of Appeals authorizes the Chairman of the Zoning Board of Appeals to execute the full EAF.
- Section 2. For the reasons set forth herein, the Town of LaGrange Zoning Board of Appeals determines that the proposed action will not cause any significant adverse environmental impacts, and therefore, the Zoning Board of Appeals wishes to issue a Negative Declaration as its Determination of Significance pursuant to SEQRA. The Zoning Board of Appeals directs the Town Clerk to file a copy of this resolution containing the Negative Declaration in his or her office and that it be accessible to the public.
- Section 3. The Zoning Board of Appeals closes the public hearing.
- Section 4. The Town of LaGrange Zoning Board of Appeals adopts our written Decision in this matter dated June 1, 2015, a copy of which decision is attached hereto and made a part hereof.
- Section 5. Based upon the findings of facts, conclusions of law and reasoning set forth in our Decision, the Town of LaGrange Zoning Board of Appeals determines as follows:
- A. There cannot be a recognized reasonable return for the Property based on any of the present permissible uses of the RFD Zoning District for the Property due to the Property's unique natural features and existing commercial building presently existing on the premises. Mr. Lehigh has successfully demonstrated a "dollar-and-cents" analysis that he would be deprived of all economic use and benefit from the Property without the requested use variance.
 - B. The alleged hardship is unique to the Applicants. Most of the other lots in the vicinity of the Property have already been developed for commercial or residential use. Other properties around 141 Daley Road do not have qualities that would require a similar use variance.
 - C. The use variance will not alter the character of the RFD Zoning District because it is already improved with a commercial building, and no new buildings will be erected on the Property. There will be no increase in noise or traffic, and, the use may be less intense than the present use already on the Property.
 - D. Mr. Lehigh purchased the property prior to the new zoning regulations and has been operating his business for approximately nineteen years. At the time he purchased the property, some commercial uses were permitted in the zone and it was reasonable for him to expect to sell the Property in the future for another commercial use. Thus, any hardship felt by the Applicants is not self-created.

Section 6. In granting the use variance to the Applicants for the purpose of operating a warehouse and storage use on the Property located at 141 Daley Road, we place the following conditions upon the grant of the variance and state that our intention is that they be strictly enforced with this use variance, and all subsequent warehouse and storage use for the Property:

- A. Use Limited to a Maximum of Ten (10) Trucks: The maximum number of 2-axle box trucks, delivery vehicles, and other similar sized vehicles associated with typical warehouse use cannot exceed ten (10) trucks on the Property at any time. This allows for the Dutchess Provisions business to grow, but places a limit on the impacts of the operation.
- B. Use Must Meet Town of LaGrange Noise Ordinance: Sound levels shall conform to all provisions contained in Chapter 162, Noise, of the LaGrange Code, as amended.
- C. Prohibition of Off-Site Glare and Limits on Site Lighting: No person, firm or corporation using the Property in accordance with this use variance shall be permitted to allow any high-intensity light to cross the boundary line of the lot on which this light source is located.

All exterior lighting in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties and shall not cause any objectionable glare observable from such streets or properties. No use shall produce glare so as to cause illumination beyond the property boundary at 141 Daley Road.

- D. Prohibition Against Multiple Uses: There shall be one use associated with 141 Daley Road at any given time. This condition requires that Lehigh Lawn and Landscaping will have vacated the Property by the time Dutchess Provisions begins its operations.
- E. Limits on Equipment and Storage: As recommended by Dutchess County Planning, all equipment and storage from Lehigh Lawn and Landscaping shall be removed. Compost and Firewood presently located on 141 Daley Road by Lehigh Lawn and Landscaping shall be removed from the Property before a new use is permitted on the Property.
- F. Prohibition on Meat Processing: No person, firm or corporation using the Property in accordance with this use variance shall be permitted to use the Property for curing, packaging, processing, or cutting of the meat or meat products.

On a motion by: Paul Bisceglia

And Seconded by: Christian Rohrbach

Roll Call Vote on Resolution:	Aye	Nay	Absent/Abstain
Paul Bisceglia	<u>X</u>	_____	_____
Nancy H. Swanson	_____	<u>X</u>	_____
Mark Christenson	_____	_____	<u>X</u>
Sandra Lane	<u>X</u>	_____	_____
Christian Rohrbach	<u>X</u>	_____	_____
Leana Cropp, alternate	<u>X</u>	_____	_____

Final Vote: 4-1

Ayes: 4
 Nays: 1
 Absences: 1
 Abstentions: 0

Resolution Declared Adopted

June 1, 2015

*Rusan Coingley, Secretary
 Zoning Board of Appeals.*

Resolution Certified and Filed:

Date: June 3, 2015

RECEIVED

JUN - 3 2015

Chris O'Keefe
 LAGRANGE TOWN CLERK

TOWN OF LAGRANGE ZONING BOARD OF APPEALS
STATE OF NEW YORK : COUNTY OF DUTCHESS

In the Matter of the Application of

DUTCHESS PROVISIONS, INC.

for a Use Variance to permit a warehouse and storage use on tax parcel 141 Daley Road, tax ID number 133400-6259-02-897882, located in the RFD Zoning District, which is presently not a permitted use as set forth in Town of LaGrange Zoning Law Section 240-27 Schedule A.

Decision

ZBA Case No. 12-14-03

**Decision Date:
June 01, 2015**

I. Preface

This matter involves an application for a Use Variance requested by Steven Leonard, owner of Dutchess Provisions, Inc. ("Dutchess Provisions"), with the consent of the present owner Alan Lehigh, owner of Lehigh Lawn and Landscaping (hereinafter referred to as "The Applicants"), from the permitted uses set forth in Schedule A of the Town of LaGrange Zoning Law Section 240-27.¹ The Applicants seek a variance to permit a Boar's Head Provisions Company (hereinafter referred to as "Boar's Head") on the premises located at 141 Daley Road (hereinafter referred to as "The Property") in the Residential Flexible Density ("RFD") Zoning District. Under the current permitted uses, warehouse and/or storage facilities are not a permitted use in the RFD Zoning District.

On November 12, 2014, we received an application for a Use Variance from the Applicants. The requested variance seeks to allow Dutchess Provisions to operate its Boar's Head business on site, provide parking for approximately six (6) to seven (7) large box, 2-axle delivery trucks for product delivery to locations in the Hudson Valley generally during the week, Monday through Fridays, with occasional operations on Saturdays².

Accompanying the application, the Applicants submitted a long form Environmental Assessment Form (EAF), which was later substituted by a Short EAF, which we reviewed.

Following this submission, and pursuant to the New York State (NYS) General Municipal Law, Article 12(B), Sections 239-l and 239-m, and in accordance with the Town of LaGrange Zoning

¹ Application to Zoning Board of Appeals, dated November 12, 2014.

² Memo to the Planning Board from Karen E. Hagstrom, Esq., *re: Dutchess Provisions Use Variance*, dated May 1, 2015

Law Section 240-93(D), we referred this application for a Use Variance to the Dutchess County Department of Planning and Economics Development ("County Planning").

County Planning reviewed the application on December 3, 2014, and issued a memo setting forth its opinion³. That opinion noted that materials and equipment from the present operation of Lehigh Lawn and Landscaping were stored off-site on County-owned land. County Planning recommended all of these materials and equipment must be removed from the County-owned land to the Property before any use variance could be granted. No further comments were made.

In the interim, a public hearing was opened on December 1, 2014. Three written comments were received from neighbors within 500 feet of the Property, who opposed the use variance. Reasons for their opposition to the variance included: (1) the possibility of increased traffic on the road⁴; (2) location of the nearby rail trail and the negative effect of having a commercial property near the rail trail⁵; (3) increase exhaust fumes⁶; (4) increase in noise⁷; (5) affect on residential zoning⁸; (6) disturbance of peace and quiet⁹; (7) privacy¹⁰; and (8) reduction in property value^{11, 12}.

While the public hearing remained opened, several board members individually visited the site to obtain information about its uniqueness and become more familiar with the subject Property.

During the public hearing held on May 4, 2015, we asked the Applicants several questions with regards to the status of Mr. Lehigh's intent in the event the use variance was granted to Dutchess Provisions, and whether multiple uses would be occurring on this site. The comments were aimed at determining whether Mr. Lehigh's landscaping business, in whole or in part, was to stay on the Property if the area variance were granted to Dutchess Provisions. It should be noted that multiple uses on properties within the Town of LaGrange are not permitted. Karen Hagstrom, the attorney for the Applicants, stated that Mr. Lehigh intended to move his business to the Town of East Fishkill and that he was applying for a permit there. She stated further that

³ County of Dutchess Department of Planning and Development, *re: Referral 14-404, Dutchess Provisions - use variance*, dated December 3, 2014.

⁴ Letter by Pier Di Camillo, dated December 2, 2014.

⁵ Letter by Jeffrey M. Feldman, dated November 25, 2014; Letter by Pier Di Camillo, dated December 2, 2014.

⁶ Letter by Pier Di Camillo, dated December 2, 2014.

⁷ Letter by Jeffrey M. Feldman, dated November 25, 2014; Letter by Pier Di Camillo, dated December 2, 2014.

⁸ Letter by Jeffrey M. Feldman, dated November 25, 2014

⁹ Letter by Jeffrey M. Feldman, dated November 25, 2014

¹⁰ Letter by Jeffrey M. Feldman, dated November 25, 2014

¹¹ Letter by Jeffrey M. Feldman, dated November 25, 2014.

¹² A Letter was also received by Juanita F. McCoy, stating "I am against this proposal."

the application to East Fishkill was essentially complete and accepted, and Mr. Lehigh was waiting for the review process to be completed. Once Mr. Lehigh received approval, he intends to move his entire business to East Fishkill and his uses on 141 Daley Road will cease completely.

The public hearing was closed on June 1, 2015, in advance of this decision. Throughout this process, the Applicants have been fully cooperative with the process, and have answered all the questions posed by members of our Board, as well as those posed by the Planning Board¹³, to whom this matter was referred pursuant to Section 240-92(E) of the Town of LaGrange Zoning Law.

II. SEQRA Determination

This application for a Use Variance has been properly classified as an Unlisted action under the State Environmental Quality Review Act ("SEQRA") because it does not meet the criteria for either a Type I or Type II action.

Pursuant to SEQRA, we opted to declare ourselves to be lead agency for the purposes of the SEQRA environmental review of the proposed use variance, and further opted to conduct an uncoordinated review of this action. We sent notice to the Town of LaGrange Planning Board that we wished to establish ourselves as Lead Agency for the purpose of the environmental review, and received no objections.

We have reviewed Part 1 of the SEQRA Short Environmental Assessment Form (EAF) and have properly considered the entire action and have taken the requisite "hard look" at the potential significant adverse environmental impacts.

In making our determination of significance, we reviewed Part 2 of the EAF and answered all of the questions thereon. In taking the "hard look", we did not identify any significant adverse environmental impacts that would be caused by this proposed use variance for 141 Daley Road or which would not be mitigated by appropriate conditions designed to neutralize potential off-site impacts which could be attached to our approval of the variance. Hence, on June 1, 2015, in advance of this decision, we issued a Negative Declaration as our Determination of Significance pursuant to SEQRA, thus completing our SEQRA review.

III. Findings of Facts

The proposed site for the variance is 141 Daley Road in the Town of LaGrange, bearing the Tax Grid Number 133400-6259-02-897882-0000 (hereinafter referred to as "The Property"). The Property consists of 1.35 acres. The Property is presently owned by 3 Daughters Holding Co., and operated by Mr. Alan Lehigh. Mr. Lehigh has been using this parcel since 1996 for his horticultural and landscaping business, Lehigh Lawn and Landscaping. Hence, the Property has

¹³ See Memo from Karen E. Hagstrom, Esq., *re: Dutchess Provisions Use Variance*, dated May 1, 2015. See also Letter from the Town of LaGrange Planning Board, *re: Dutchess Provisions*, dated April 22, 2015.

been used for a commercial, non-residential use for almost twenty (20) years.

The Property is a unique shape with unique features. One of the more glaring features is the presence of a stream located directly through the middle of the 1.35 acre lot. There is an existing commercial building on site. Mr. Lehigh, in an attempt to move his business operations elsewhere, has attempted to sell this property for many months.

Dutchess Provisions, who had previously operated its business in Fishkill since 1999, is seeking a new location for its expanding business¹⁴. Mr. Leonard, owner of Dutchess Provisions, spoke with Mr. Lehigh about obtaining the parcel to continue his Boars Head product distribution operation, and to use the Property to conduct administrative business and storage for his products.

Prior to applying for a Use Variance, the Applicants submitted a Commercial Inquiry Request for Information to the Town of LaGrange Building Inspector, which was later amended on October 2, 2014¹⁵. The Applicants sought advice for whether the Property could be leased to Dutchess Provisions for the purpose of parking, loading and unloading commercial delivery trucks on the site.

The Town of LaGrange Building Inspector advised the Applicants that this was not a "routine change of use," and that a warehouse use is not permitted in the RFD Zoning District. The RFD Zoning District, formally known as the R-40 Zoning District, is primarily residential, interspersed with some open space and undeveloped land. The district also hosts a former railroad line which is now a rail trail. However, presently, there are other commercial businesses within the district, including a large construction yard operated by Ben Ciccone. Therefore, the Building Inspector made the recommendation to apply for a Use Variance to operate a warehouse commercial business on the Property.

During the course of this review, we questioned Mr. Leonard extensively about the nature and scope of this intended business operations on the site, in the event that the use variance were to be granted. According to his testimony in response to those inquiries, Dutchess Provisions will operate its warehouse operations at the site, primarily using the Property to conduct administrative duties with one to two staff members on site at any given time. Dutchess Provisions will also use the Property to store six to seven delivery vehicles on site, including one refrigerated truck. These trucks are 2-axle, box-style trucks. Drivers will load the trucks in the early morning hours and be off-site making deliveries the rest of the day, leaving one truck on the premises throughout the day. At the end of the day, all trucks will be returned on the Property and remain on-site overnight.

This proposed use would not be a wholesale use, but merely a warehouse and storage use,

¹⁴ Letter from James J. Miccio, Mayor of the Village of Fishkill, not dated.

¹⁵ See letter from Kenneth W. McLaughlin, Town of LaGrange Building Inspector, to Mark A. Day, P.E., dated October 3, 2014.

where minimal employees will be on site at any given time, and trucks will not be located on the Property during most of the day when they are out for deliveries. Further, customers will not visit the site. All sales and deliveries will take place off-site.

As warehouse and/or storage facilities are not permitted in the RFD Zoning District, Dutchess Provisions require a use variance in order to operate its business.

IV. Analysis

Under Town of LaGrange Zoning Law Section 240-85, a use permit is required before the establishment or change of any nonresidential use or activity, including the change of the owner, operator or name of any business, trade office, industry, institution or other nonresidential activity.

Given the nature and complexity of use variances, we have diligently asked complete and thorough questions of the Applicants to fully understand both the use and the reasons why the variance has been requested. After careful consideration, we grant the use variance requested, with conditions attached. Our reasons are set forth in detail below.

A. Our Jurisdiction

Under the Town of LaGrange Zoning Law Section 240-92(B), we have the power to grant use variances authorizing a use of land which otherwise would not be allowed under the Town of LaGrange Zoning Law.

According to the Town of LaGrange Zoning Law, "The Zoning Board of Appeals, upon appeal from the decision or determination of the Zoning Enforcement Officer, shall have to power to grant use variances authorizing a use of land which otherwise would not be allowed or would be prohibited by the terms of this chapter."¹⁶

Section 267-b(3)(a) of the New York State Town Law provides similar authority to the local municipality's Zoning Board of Appeals, permitting the Zoning Board of Appeals to grant use variances.

Contrary to an area variance, which affects the physical dimensions of land required under a municipality's zoning laws, a use variance affects the type of use the land may be put to, and, if granted, allows a use that conflicts with the municipality's zoning laws. Use variances run with the land and allow that particular property to become a conforming use at that location in perpetuity, until the use variance terminates upon the reestablishment of permitted use in the RFD Zoning District.

Use variances are not easily granted. The reason for this is that, when the zoning laws have

¹⁶ Town of LaGrange Zoning Law § 240-92(B)(1). See also N.Y. Town Law §267-b(2)(a).

been drafted and adopted by the municipality, it is presumed that the municipality has adequately determined which uses are permitted in a given zoning district, and which uses are prohibited. Therefore, an applicant for a use variance has an exceptionally difficult burden to satisfy in order to show that such hardship requires a use variance.

An applicant must demonstrate that the applicable regulations and restrictions imposed by the Zoning Law cause an unnecessary hardship. To show this, the Applicants must demonstrate all of the following factors:

- (A) That under the applicable regulations and restrictions imposed by this chapter the applicant is deprived of all economic use and benefit from the property in question, with proof of financial evidence;
- (B) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
- (C) That the requested use variance, if granted, will not alter the essential character of the district or neighborhood;
- (D) That the alleged hardship has not been self-created¹⁷.

Unlike an area variance, where we conduct a balancing test of each factor, the applicant for a use variance must demonstrate each of the above factors in totality.

Given the importance and necessity of each factor as it applies to the Applicants, we discuss each of the factors separately below.

B. Analysis of the Four Factors.

1. Lack of Reasonable Return.

The first factor we are required to review is whether the Applicants, if required to follow the present regulations and restrictions from the Zoning Law, would be deprived of all economic use and benefit from the property in question, or fail to obtain a reasonable return from his property.

This factor requires a “dollar and cents” analysis that the Applicants would not be able to realize a reasonable return from any of the permitted uses in the RFD Zoning District.¹⁸ It is not enough to permit a prohibited use merely for the purpose of obtaining a higher return than from those uses currently permitted in the Zoning Laws.

¹⁷ Town of LaGrange Zoning Law Section 240-92(B)(2). See also N.Y. Town Law §267-b(2)(b).

¹⁸ *Edwards v. Davidson*, 94 A.D.3d 883 (2d Dept., 2012)

The present RFD Zoning District, formally known as R-40 District, is "generally built up in residential uses, interspersed with some open space and undeveloped areas."¹⁹ Presently, the permitted uses include: single-family dwelling, accessory apartment, home occupation, bed-and-breakfast, residential health-care facilities, adult home and group homes, civic buildings and places of assembly, essential services, retail sale of horticulture products²⁰, solar panels, tennis/sport courts, and wireless communications facilities.²¹

Warehousing uses are restricted to Commercial (C) and Industrial (I) Zoning Districts.

On April 3, 2015, Mark Day, the Applicants' consulting engineer, provided us with a narrative addressing the hardship faced regarding each of the permitted uses in the RFD Zoning District.²² The Property presently has an existing commercial building on the site. Municipal water and/or sewer services are not available at this site.

We find that, based on the size of the lot and its natural features, including a stream that bisects the property, it is not suitable for any of the permitted uses in the RFD Zoning District.

Specifically, Mr. Day notes that, in order to construct a single-family house, "the existing building would need to be razed and the site approved for both a well and a sewage disposal system." In order to construct a house on the Property for a single-family dwelling, the existing building would need to be demolished, an estimated \$115,000.00 loss. Improving the site suitable for a single-family residence would involve constructing a new sanitary waste disposal system, which may cost approximately \$450,000.00. Furthermore, given its size, the lot is substandard for residential use, which requires a minimum of 80,000 square feet where no town water or sewer is located.

Given that the average assessed value of residential properties within the vicinity of the Property located on 141 Daley Road is \$175,000.00, this demonstrates a lack of reasonable return.

In this regard, we take guidance from the court decision in *Matter of Commco, Inc. v. Amelkin*, 109 A.D.2d 794 (2d Dept., 1985). In that case, an appellate court held that a use variance should be granted when the Petitioner successfully demonstrated a lack of reasonable return of an obsolete school building. In *Commco*, a school was located on a 14.5 acre lot, but was later closed. In 1981, the school district entered into a contract to sell the property to Commco, on the condition that Commco could obtain a zoning change or a variance to use the lot for a

¹⁹ Town of LaGrange Zoning Law §240-24(C).

²⁰ Present use by Lehigh Lawn and Landscaping. Mr. Lehigh operated this under an area variance from the 5 acre minimum requirement.

²¹ Town of LaGrange Zoning Law §240-27, Schedule A1

²² Letter from Mark A. Day, P.E., *re Use Variance Narrative: Dutchess Provisions (Owner Alan Lehigh of 3 Daughters Holding Co. LLC)*, dated April 3, 2015.

senior citizen residence. The property in *Commco*, similar to this lot, had been zoned R-40. Based on certain testimony, in order to conform to residential standards in the given zoning district, the school building would have to be demolished and the lot would also have to be subdivided to conform with the 1-acre lots permissible in the zoning district. The Court held this to be sufficient dollar-and-cents proof that the improved lot and existing building could not yield a reasonable return without granting a use variance.²³

Similarly here, the Applicants have provided dollar-and-cents details as to why converting this Property and improved lot into a residential use is not financially viable, and cannot yield a reasonable return.

In addition to its lack of reasonable return for any residential use, such as single-family dwelling or accessory buildings, Mr. Day also noted that the location was not suitable for other permitted uses²⁴. For example, the Property could not reasonably be used for a bed-and-breakfast based on because it is adjacent to a contractor's yard. The Property is substandard for any farming activities because it is limited to 1.35 acres and by the stream which bisects the property. Finally, there have been no offers or interest shown for any other uses, including health care facility, civic building, utility companies, wireless communications, or other horticulture centers, despite the fact that the Property has been for sale for a long period.

At our request, the Applicants also supplied several documents to demonstrate its present costs for maintaining the Property and other expenses, including heating and electric expenses, mortgage payment, monthly maintenance, and paid taxes.

As the Zoning Board of Appeals, we act as the administrative fact-finders²⁵. We find that the Applicants have successfully demonstrated that they cannot obtain a reasonable return for this Property based on the present permissible uses.

2. Unique hardship.

The second factor that must be met by the Applicants is that the particular hardship is unique to the Applicants, and not the general community such that a use variance would be required for all similarly situated parcels.

Use variances are a special remedy with a high burden of proof to be met by the Applicants. If other properties experience similar hardship, a use variance is not an adequate remedy.

²³ *Matter of Commco, Inc. v. Amelkin*, 109 A.D.2d 794, 795 (2d Dept., 1985)

²⁴ Letter from Mark A. Day, P.E., re *Use Variance Narrative: Dutchess Provisions (Owner Alan Lehigh of 3 Daughters Holding Co. LLC)*, dated April 3, 2015.

²⁵ *HoliMont, Inc. v. Village of Ellicottville Zoning Bd. Of Appeals*, 112 A.D. 3d 1315 (4th Dept., 2013).

Instead, there would need to be a change in the zoning law itself.²⁶

In this case, the Property represents a unique hardship for the Applicants. First, the Property currently has an existing commercial building on the premises from Lehigh Lawn and Landscaping operations that began in 1996. Thus, with the majority of permissible uses restricted to residential, the building would likely have to be demolished before another permissible use could be established. This is not the case for other lots in the vicinity. Many other lots are already established as residential and are in conformity with the Zoning Law.

Second, the Property has a stream that bisects the lot. This unusual natural feature further limits how the Property could be used under the present regulations of the RFD Zoning District. The presence of the stream makes the usable portion of the lot smaller than the 1.35 acres of gross area. The presence of this stream also increases the difficulty of designing and locating other types of uses on the lot. However, this stream would not affect the use variance requested by the Applicants. Business operations would be confined to the interior of the existing building.

The variance affecting the use for this particular parcel is unique to the Applicants, and the hardship and features of this particular parcel do not match those of similarly situated lots to justify a zoning change.

Therefore, we find that the Applicants have successfully demonstrated that the unnecessary hardship is unique to him.

3. Character of the District or neighborhood.

The third factor that the Applicants must show, and we must determine, is that, if this use variance is granted, it will not affect the character of the neighborhood.

The Property is located in an RFD Zoning District, that is comprised primarily of residential lots. Further, the objective of the District is residential with open space and undeveloped land.

However, within the RFD Zoning District, other commercial uses are also present; for example, Ben Ciccone's construction yard, which is adjacent to the Property, as well as the existing landscaping business operated by Mr. Lehigh, which involves ingress and egress of trucks throughout the day.

Dutchess Provisions' proposed operation, while it is labeled as a warehouse, would be primarily administrative throughout the day. Meat and other products will be stored on the premises for the purpose of deliveries, but no curing, packaging, processing, or cutting of the meat will take place on the Property.

²⁶Terry Rice, N.Y. Town Law §267-b, Commentary. See also *Clark v. Zoning Bd. of Appeals of Town of Hempstead*, 301 N.Y. 85 (1950).

Initially, there will be refrigerated trucks to preserve the meats and products. This will require that the refrigeration units on the trucks will run while they are parked on-site. However, Dutchess Provisions plans to install a cooler inside the building, and, once that is in place, it will no longer use the trucks for refrigeration. This will further reduce any noise on site.

Unlike the present landscaping operation, which sometimes operated every day with no restricted hours, Dutchess Provisions would operate Monday through Friday, with occasional weekend hours. The trucks used for delivery would be out once a day for the purpose of making deliveries, and then return and stored overnight on the Property.

This contrasts with the current landscaping use of the Property where there could be significant uses of heavy equipment and truck traffic at all hours of the day, particularly in the Winter when trucks would be in and out for plowing and loading salt and sand.

On the whole, we find that the proposed use will be less intense than Mr. Lehigh's landscaping operation, as trucks would only enter and leave for deliveries in the morning and when they return at night. According to Dutchess Provisions, the trucks themselves, including the refrigeration truck, do not generate excessive noise, and are not any louder than a conventional car or diesel van. In fact, Mr. Leonard of Dutchess Provisions presented a letter from the Town of Fishkill, where he had previously operated since 1999, that stated Dutchess Provisions never received a noise complaint.

Throughout the day, only two personnel would be on-site at the location. All other employees drive their own cars to sales appointments off-site.

The proposed use would not generate any additional noise or traffic than the current landscaping use. In fact, there would likely be a decrease in traffic as Mr. Leonard and Dutchess Provisions would mainly use the building for administrative business.

In this regard, we find guidance in the case of *Matter of Dwyer v. Polsinello*, 160 A.D.2d 1056 (3d Dept., 1990). In that case, an appellate court found that traffic and noise levels were acceptable factors to consider for the change of the neighborhood criteria. In *Dwyer*, a school building had been closed and was proposed to be converted to a building with professional offices, a retail showroom and equipment-testing area for an audio equipment supply business. As with this Property, the lot was located in a residential zone, but the building could not practically be converted into a residential building.²⁷ Finding that the building would remain virtually unchanged, and involve no increase in traffic, the court held that the area variance was permissible.²⁸

Here, the present building on the lot would remain. No new building would be erected. Neither will there be construction of additional on-site infrastructure such as parking lots, etc. Also, this

²⁷ See *Matter of Dwyer v. Polsinello*, 160 A.D.2d 1056, 1057 (3d Dept., 1990).

²⁸ *Id.* at 1058.

use will not create an increase in traffic over the present use. Thus, the character of the neighborhood would not change adversely as a result of this use. In fact, given that this use is in several ways less intense than the existing landscaping use, this change in use is likely to benefit the character of the neighborhood due to its lesser impact on the surrounding properties.

4. Self-created Hardship.

The final factor that must be demonstrated by the Applicants is whether the hardship is self-created. Unlike an area variance, a self-created hardship is fatal to granting a use variance.²⁹

Often, if an applicant purchases the property subject to the zoning restrictions from which the applicant is seeking relief, that is considered to be a self-created hardship. In other words, if the applicant is aware of the applicable zoning restrictions at the time the property is acquired, or should have been aware of them, then the applicant's hardship is considered to be self-created. A self-created hardship, as a matter of law, precludes the granting of a use variance.

At the time which Mr. Lehigh acquired the property, in 1996, the permitted uses in the R-40 Zoning District included additional non-residential uses such as child care center, clubhouse, and stables or riding establishments and clubs. While a majority of the permitted uses were similar to the uses presently permitted, there were a handful of uses that were more commercial in nature rather than strictly residential.

Subsequent to Mr. Lehigh's acquisition of the Property, the Town of LaGrange amended its zoning regulations in 2006. Some of the uses that were permissible in 1996 for the R-40 District are still permissible for the RFD Zoning District, but other commercial or business uses are no longer permissible.

Mr. Lehigh operated his landscaping business for approximately nineteen years. When he purchased the Property, the area had some commercial development in the area, and permitted a range of commercial uses. Although warehouses were not permitted in 1996, and are still not permitted in 2015, Mr. Lehigh could have safely and reasonably assumed at the time he purchased the Property that he would be able to sell it at some point in the future to another purchaser who wanted to use it for commercial purposes.

The current market and economy may not have been as viable as it was in 1996, but it cannot be said that Mr. Lehigh bought the Property with the knowledge that he would be unable to use it for other commercial purposes in the future. Therefore, as commercial uses existed in 1996 when Mr. Lehigh began his landscaping operation, it cannot be said that any unnecessary hardship is self-created.

V. Decision

²⁹ Terry Rice, N.Y. Town Law § 264-b, Commentary.

We have reviewed all the required factors for assessing a use variance application and we have carefully considered the record before us. For the reasons we have discussed in the analysis above, we decide that:

- There cannot be a recognized reasonable return of the Property based on any of the present permissible uses of the RFD Zoning District for the Property due to the Property's unique natural features and existing commercial building presenting existing on the premises. Mr. Lehigh have successfully demonstrated a "dollar-and-cents" analysis that he would be deprived of all economic use and benefit from the Property without the requested use variance.
- The alleged hardship is unique to the Applicants. Most of the other lots in the vicinity of the Property have already been developed for commercial or residential use. Other properties around 141 Daley Road do not have qualities that would require a similar use variance.
- The use variance will not alter the character of the RFD Zoning District because it is already improved with a commercial building, and no new building will be erected on the Property. There will be no increase in noise or traffic, and, may be less intense than the present use already on the Property.
- Mr. Lehigh purchased the property prior to the new zoning regulations and has been operating his business for approximately nineteen years. At the time he purchased the property, some commercial uses were permitted in the zone and it was reasonable for him to expect to sell the Property in the future for another commercial use. Thus, any hardship felt by the Applicants is not self-created.

We may decline a request for relief when the request is defective and does not conform with the applicable rules and regulations. In this case, we determine that the Applicants' application for a use variance is not defective, and is granted.

VI. Conditions

Use variances run with the land and affect future uses of the subject property. If a use variance is granted, we have the authority to impose reasonable conditions and restrictions that are directly related to and incidental to the proposed use of the property.³⁰ It is our duty and obligation as the Zoning Board of Appeals to grant the minimum variance necessary to relieve the hardship and to "preserve and protect the character of the neighborhood and the health, safety and welfare of the community".³¹ However, any conditions imposed must affect the land

³⁰ N.Y. Town Law §264-b(4).

³¹ Town of LaGrange Zoning Law §240-92(B)(3)

and its use; it cannot regulate details of the business operation.³²

- Use Limited to a Maximum of Ten (10) Trucks

Dutchess Provisions will be operating six (6) to seven (7) 2-axle box trucks to be used for deliveries. Allowing some room for the Dutchess Provisions business to grow, but in order to place a limit on the impacts of the operation, we condition our approval on limiting the number of trucks that may be used. The maximum number of 2-axle box trucks, delivery vehicles, and other similar sized vehicles associated with typical warehouse use cannot exceed ten (10) trucks on the Property at any time.

- Use Must Meet Town of LaGrange Noise Ordinance

Sound levels shall conform to all provisions contained in Chapter 162, Noise, of the LaGrange Code, as amended.

- Prohibition of Off-Site Glare and Limits on Site Lighting

No person, firm or corporation using the Property in accordance with this use variance shall be permitted to allow any high-intensity light to cross the boundary line of the lot on which this light source is situated.

All exterior lighting in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties and shall not cause any objectionable light pollution or glare observable from such streets or properties. No use shall produce glare so as to cause illumination beyond the property boundary at 141 Daley Road.

- Prohibition Against Multiple Uses

There shall be one use associated with 141 Daley Road at any given time. This condition assumes that Lehigh Landscaping will have vacated the Property by the time Dutchess Provisions begins its operations.

- Limits on Equipment and Storage

As recommended by Dutchess County Planning, all equipment and storage from Lehigh Lawn and Landscaping located on the subject Property shall be removed. Compost, mulch and Firewood presently located on 141 Daley Road by Lehigh Lawn and Landscaping shall be removed from the Property before a new use is permitted on the Property.

- Prohibition on Meat Processing

No person, firm or corporation using the Property in accordance with this use variance shall be

³² Terry Rice, N.Y Town Law §264-b, Commentary. See also St. Onge v. Donovan, 71 N.Y.2d 507

permitted to use the Property for curing, packaging, processing, or cutting of the meat or meat products.

The conditions placed on the use variance are designed to provide the minimum variance required to relieve the Applicants' unnecessary hardship, neutralize and mitigate any off-site impacts of the use, and to preserve the residential character of the RFD Zoning District to prevent the area from becoming highly commercialized or industrial.

The proposed use, with these conditions imposed, will not alter the character of the neighborhood. Hence the variance is granted with the imposed conditions attached to the Warehouse Use for 141 Daley Road.

It is so ordered in accordance with the foregoing.

Dated: June 1, 2015
LaGrange, New York

Town of LaGrange Zoning Board of Appeals

Roll Call	In Favor	Against
Paul Bisceglia, Chairman	<u> X </u>	<u> </u>
Nancy H. Swanson	<u> </u>	<u> X </u>
Mark Christenson		Absent
Sandra Lane	<u> X </u>	<u> </u>
Christan Rohrbach	<u> X </u>	<u> </u>
Leana Cropp, Alternate	<u> X </u>	<u> </u>

Susan Cavigley
Secretary
Zoning Board of Appeals.

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JUN - 3 2015
Christa O'Leary
LAGRANGE TOWN CLERK