

**TOWN OF AMENIA
ZONING BOARD OF APPEALS
OCTOBER 13, 2004**

PRESENT: Harry Clark, Chairman
Rudy Eschbach
Norman Cayea
Katie Loughlin
John Quinn

Harry Clark opened the meeting at 7:02 P.M. All the proper notices were given for the Public Hearing.

Roll Call was taken

Chairman Harry Clark started the meeting by stating that the Public Hearing for Patrick Nelligan would not be heard. When an applicant files a complaint in regard to a decision that was made by the Zoning Officer, by NYS Law there is 60 days in order to file a complaint. In this case the decision was made in January 2003; Mr. Nelligan came in September 2003 and had a meeting with town officials where he disagreed with the CO that was issued. He had an email exchange in April of 2004 and finally filed the complaint in September 2004. Under NYS Law the ZBA cannot hear this case. Mr. Nelligan will be refunded the \$150 for the application.

MOTION MADE THAT THE BOARD IS NOT EMPOWERED TO HEAR THIS CASE was made by Norman Cayea, seconded by Katie Loughlin.

ROLL WAS CALLED – ALL IN FAVOR

WILLIAM J. YENO IV, FRONT YEARD VARIANCE, REAR YARD VARIANCE, ROUTE 22, AMENIA, N.Y. Mr. Yeno is proposing a 2 story one family dwelling 24' by 50' with 4 bedrooms. Due too septic and the fields, the house needs to be set where there needs these variances. He thought that he had purchased a building lot. There has been BOH and DOT approval. Mr. Quinn asked if the plans for the house had been changed. Mr. Yeno stated yes. Mr. Quinn asked if Mr. Yeno was going to live in the house. Mr. Yeno stated that he now lives in a motel that is much too small and he will most likely live there. He then discussed with the Board the overall layout of the house and driveway. Ms. Loughlin stated that the only change Mr. Yeno was making was the reduction of 10', with a two car garage underneath. Mr. Clark asked if Mr. Yeno had had a meeting with the BOH. Mr. Yeno stated he did and that the BOH was adamant, because of the distance between the well and the septic. Mr. Clark looked back at the last hearing on this property in regards to public comments, the nature of the building was in the contemporary ranch house in a predominantly one family historic district, there not appropriate in this area. Mr. Yeno proposed the house as a two story to better fit in with the neighborhood. It will have clapboard design for siding with shutters. The Board found the words "most likely living in the house" troubling. Ms. Loughlin

asked how many years Mr. Yeno had owned the property. He stated 2 years. Mr. Clark asked the same issue that was on the table before, "What can you do to minimize the impact on the house next door" Mr. Yeno didn't feel that there was any impact on the Silvera house. If the house were moved closer to Route 22 it would give more space between the Yeno and Silvera property. Also landscaping was an issue to be done. Mr. Yeno will get with the neighbors and put in whatever screening they feel is necessary.

Mr. Eschbach asked if this house was going to be a rental? Mr. Yeno stated it would not. The operative map is the Spencer Hall map stamped May 19, 2003. There is a site plan undated which shows the driveway. This will be known as Exhibit I.

Mr. Clark asked any interested parties please come forward and look at the elevation, ground floor and second floor plans.

PUBLIC COMMENTS: Diana King: Wanted to know could this house be turned into a 2 family house.

Mr. Yeno stated this is not a rental issue. Mr. Eschbach stated that the application is for a single family home.

Mr. Clark stated that there is a misprint in the application on page 4. A clerical error stating 2 family home (correction 1 family home).

Suzanne Murphy Since the last board meeting on this property there has been no effort to keep the property looking presentable. There has been equipment for sale on the property and no effort to put any screening up to help boost your case.

Mr. Yeno felt that if he had activity on the property, people would wonder what he was doing when he didn't have approval.

Diana King asked why the equipment had not been moved off the property? Mr. Yeno didn't realize they were an eyesore.

Mr. Clark encouraged Mr. Yeno to sit down with the neighbors after the last meeting to try to work out. Mr. Yeno stated that the neighbors don't want any building there at all. He had tried to make an effort to have a meeting with my neighbor, Mr. Silvera. When he came to the motel in Wingdale, Mr. Silvera said why don't you sell the property and get away from all the grief. Mr. Silvera has been trying to buy the property from day one. Mr. Silvera stated he went to Wingdale to see Mr. Yeno and offered him a solution so Mr. Yeno would not suffer any loss.

Joseph Brennan, Mygatt Road – There were five points which were discussed from the last meeting. Mr. Clark read the points for and against on which the decision was made a year ago. Mr. Brennan asked if there was any documentation that gives a legal basis to know if he is in compliance. Ms. Loughlin stated that there is BOH approval. If the neighbors have any problem with that, it should be taken up with the BOH. The ZBA and Mr. Yeno don't have anything to do with the BOH approval and your issues.

The issues the ZBA is concerned with is DOT approval, BOH approval and the site plan.

Mr. Brennan asked do any of the changes that Mr. Yeno has made have any affect on BOH approval. Ms. Loughlin stated that it would not have any affect.

Suzanne Murphy asked if an engineer states the house is going in one location, how can it be moved 10 feet? Mr. Clark: We proposed an option to the applicant to help mitigate

the impact of this house on the neighbor. Mr. Yeno does not know if this can be done until he has consulted with the engineer.

Mr. Brennan: What would happen if he does not comply. Mr. Clark answered he would not get a CO.

Nancy Brusie, Zoning Officer: A person from BOH is on site when the septic is put in. This is to insure it is placed where they approved it. This is done before the house is built. When the foundation is dug, I will be there to make sure that the measurements are the same as the site plan.

Mr. Brennan – 10 feet has been removed from the site plan, where is that 10'?

Mr. Clark the north end.

Mr. Brennan – We had never seen a plan of the house before so this is the first time.

Mr. Yeno answered it is still basically a 24' by 60' area. Instead of a ranch house cut in half for a 2 family, it is a two story 1 family house you need a 24' by 50' foundation to support the house.

Mr. Brennan asked about the size of Mr. Yeno's family. Mr. Yeno stated he had children. Mr. Brennan asked because the setback is not in keeping with the nature of the countryside, how would it be reconciled with the addition of a bush or barrier? Ms. Loughlin thought they were talking about a hedge. Mr. Clark stated that it could be made a condition of the variance .

Mr. Brennan - Why did you take all the trees you left only one row of trees? Mr. Yeno answered he took only the trees where the house was to be placed.

Mr. Brennan – The shape of the parcel has not changed. Mr. Yeno - no.

Mr. Brennan: The impact the neighborhood remains substantial. Mr. Yeno – no, I don't see any impact. Mr. Clark – The issue of impact has to do with the number of families living in the dwelling. Mr. Brennan asked the board the circumstances under which the property was sold to Mr. Yeno? This property was offered to me when I first came here and was told it was under an acre. Is that an issue that has been determined? Mr. Cayea stated there is a variance dating back to 1983. Ms. Loughlin stated that the former owners William and Nancy Hohlowksi, had all the documentation in the file. He wanted to put up a shed and sell antiques. We couldn't approve that as it had to go before the Town Board to change the zoning. He went before the Board and it was denied. Mr. Yeno then purchased the lot and the DOT then came in and took quite a few feet before the sale. Mr. Yeno bought the property along with the area variance granted in 1983.

Mr. Silvera 23 Old North Road – Mr. Yeno had a 1-story house with garage underneath, now there is a 2-story house with garage underneath. He has now almost doubled the square footage. Because of the need for variances, it means that this property is not normal. Mr. Eschbach interjected that where the house is being situated it needs a variance. Mr. Brennan asked if the Board has the right to grant or not to grant the variance. Regardless to any hardship to Mr. Yeno there is no significant difference between the two proposals. Mr. Clark replied that the previous proposal was for a 2 family house. Mr. Brennan asked that the Board really considers the truthfulness of this application. Mr. Clark – That is a statement.

Marco Sartori = 8 Old North Road – He believes that he has to be 200' from his well. If the expansion of the fields fails what do you do? When you build that is part of the building program. Ms. Loughlin - Mr. Yeno spoke of exactly where the septic was going, why and what the reserve was going to be.

COMMENTS: (Everyone making statements did take an oath to tell the truth) Diana King – With a 2-story house on that property it will make a problem with traffic visibility. Mr. Clark – That is DOT issue. Ms. King – Is the DOT expecting a 2-story building? Ms. Loughlin – DOT comes in and tells you what you have to do in order to put in the driveway and any drainage along the road. It has no impact on the house. Since there are going to be less people residing there it will have less of an impact on traffic. Mr. Clark – This is in regards to site lines turning left out of Old North Road on to Route 22. There is a row of trees behind, which that house will be. That row of trees has been there for many years, therefore the house will not be beyond that row of trees. Mr. Ronald B. Freedman – Professional Engineer Wappingers Falls, NY for Mr. Yeno - Presented plans stamped by the Health Department He discussed the distance between well and septic systems. There is at least 100' between the well and septic system except where a sewage system is at a higher elevation than a well and in direct line of drainage to the well. Mr. Sartori's well is 185' from where the expansion system would go I met with BOH and we felt that 185 more than met the code. You could change the angle of the house and gain footage on the rear of the house, moving the house closer to Route 22. Mr. Clark – This would benefit the neighbor. Is this something you would be willing to do? Mr. Yeno – Absolutely. Mr. Sartori approached looking at the septic system. Mr. Freedman – If and when the septic system fails, this is the replacement system which is 185' from your well. If this sewage system fails the path would be like this, away from your well, if it goes the other way it would hit the ditch on the edge of the property and carry it again away from your well. Your home is not in direct line for drainage from that septic system.

Suzanne Murphy – Feels that the old and new applications are the same. We are directly across from the property.

Chris Silvera – Discussed the design of the proposed house not blending, leaving equipment around does not create any type of relationship with the neighbors, and after he was turned down he was made an offer to keep him whole. He rejected that. There is no hardship here. Impact on Old North Road is great.

Bob Murphy – Read statement from the Department of State Website, Town Law 235 . In regards to the legal proof has not been met.

Mr. Eschbach – to audience. If the application came in today for a 1720 Saltbox, would you feel any different? Audience No. Mr. Eschbach - You are not questioning the house, you are questioning the right of someone to put a house there. Audience – No - Suzanne Murphy - A large house that is not in keeping is a greater impact, in addition it has to be sited so close to the Silvera home, along with all the other issues. If you consider doing it, it should be phases. She felt that Mr. Yeno was not making any attempts. It is a lot of impact to a lot of people in the neighborhood.

Chris Silvera - He feels that no matter what is built there, he will be looking at it from his window, however if he put in something that blended in with the community, it would be better, however that detracts from the community. The kitchen, small dining room, living room, sunroom, porch, bedrooms all face this house. Also the well is on the same side. Katie Loughlin - If you had a hardship and had to rent to your family or to someone else how you would feel? Chris Silvera - No, would rent to strangers first to get the maximum rent.

Harry Clark - Is this stick built? Mr. Yeno - No, modular.

Marco Sartori - How much of a variance? Harry Clark - It is the same as the last time, however, if we site the house on the pivot the site of the house changes but the amount of impact does not. On the north end minimum required is 80' – proposal is for 28.8'; require 51.2' in the front; on the south end of the house they are 52.3' from the property line. The variance sought is for 27.7'; the rear yard they are required to have 50' and the proposal is for 30'. If the changes go through it would be 35' and 40' respectively. The front of the house is facing Route 22. A 15' variance at the north end and the south end a 10' variance. Marco Sartori - How about east? Harry Clark - It is the northeast and the southeast.

Diana King - Concerned that this is a modular. This would be the only modular home on our road.

Joseph Brennan - It looks as if the community is united against someone trying to use their property. The parcel is unlike any other in that area. The number of changes that have to be made for the building, if those changes are made that is going to set a prescient in this area. What would be built would solve Mr. Yeno's problem but would create problems for the entire community.

Chris Silvera - As a community, we are willing to sit down with Mr. Yeno and come to some amicable thing; maybe donate the land to the town.

Mr. Clark – Going into Executive Session. Mr. Quinn - Troubled with Mr. Yeno's response to question would you live in the house? This is critical. This type of neighborhood would not want the turnover of rentals. Mr. Yeno's response was not reassuring.

Norm Cayea - Have to consider the variance of 1983.

Harry Clark - Read two letters from Arlene Iuliano residing at 5129 Route 22 dated October 13, 2004 and Barbara Wrobel residing at 31 Old North Road dated October 4, 2004. (See attached).

Norm Cayea - The house will not be standing out, he is willing to mitigate a few things with the house, the lot is unique. Mr. Clark - read letter from Dan Brown, Zoning Administrator dated October 4, 1983 to William and Nancy Hohlowksi. (See attached) This is a permitted use in that area is for a one family house. The right to put a house there is not an issue. The second question is "Is there any other way the problem can be resolved? Mr. Eschbach asked if there were any way to totally front the house on Hamm Road? Mr. Freedman stated that it would then have to be located on the south west corner of the triangle. The septic system would then have to be pumped up. Mr. Clark - Has that option ever been considered? Response: No. The third is the variance substantial? The last time we were split. It is going to be 57' and 37' on the side and the buffer remains. The fourth was the impact on the physical or environmental conditions of the neighborhood. Mr. Cayea stated if you look at Route 22 – no. Ms. Loughlin: looking at Route 22 no impact, especially if the screening and the buffer that is being put in. Mr. Clark - The fifth is it self-creating? Ms. Loughlin - Yes it was. It is a hardship. Mr. Clark - The house must meet the standards of the zoning code. My concern is the impact on the entire area. The Master Plan is going to place this in the Historic District. The nature of the houses is important there. The applicant has come back with double the size of the house when the issue the first time was impact on the neighborhood. This will be greater impact. Modular building today is so well done that

is not a retraction. Ms. Loughlin stated that this is not a historical district yet. Mr. Yeno has tried to make adjustments. You have a piece of property facing Route 22 with a plaza and other commercial buildings across the road with DOT and BOH approval and we are here to interpret the law. We asked for approvals and surveys to be completed and these have been done. What will happen to this property and how will it impact the neighborhood with a bunch of weeds growing? Mr. Eschbach - What will happen to the Board if we deny the owner when he has a letter stating he can build a house on that property? Mr. Clark - The impact on the Silvera property is undeniable. It is a 2-story house in his face. Mr. Yeno are you willing to face it on Hamm Road at the bottom of the lot? Mr. Freedman stated that the house would be 10' feet from the property line on Hamm Road. Linda Sartori - The Plaza is a result of bad zoning 25 years ago. John Quinn - I feel it should be denied due to impact on neighborhood and self created. The variance in view of Mr. Silvera's proximity does damage to him. Mr. Eschbach - Mr. Yeno could come back with alternative site plan. Mr. Clark asked Ms. Brusie regarding permitted use. Ms. Brusie - It is a non-conforming piece of property acreage wise. It will need some type of variance for residential use. Mr. Clark asked Mr. Yeno if he wanted to adjourn in order to re-site this house. Mr. Yeno feels that facing the house toward Hamm Road would be a bigger impact. I would rather go ahead. Mr. Silvera - Whatever Mr. Yeno puts on that property will affect the character of the community.

MOTION TO GRANT VARIANCE WITH CONDITIONS THAT SCREENING AND HEDGES BE PROVIDED ON THE EAST SIDE OF THE LOT, THAT THE HOUSE BE SITED AS CLOSE TO ROUTE 22 AS PRACTICAL, THAT THE APPLICANT WILL MAKE WHATEVER DESIGN CHANGES THAT ARE POSSIBLE, PRACTICAL AND AFFORDABLE TO MAKE THE HOUSE IN KEEPING WITH THE CHARACTER OF THE NEIGHBORHOOD WAS MADE BY Katie Loughlin, seconded by Norm Cayea.

ROLL CALL TAKEN: Rudy Eschbach - No
Norm Cayea - Yes
Katie Loughlin - Yes
John Quinn - No
Harry Clark - Yes

MOTION CARRIED.

PATRICK NELLIGAN 2004M – APPEAL FROM A DECISION OF THE TOWN OF AMENIA ZONING OFFICER RE: JUDGE MANNING HORSE TRANSPORTATION, 18-20 MECHANIC STREET, AMENIA, NY

Patrick Nelligan - Seven years ago DEC violation in regard to wetlands. This was corrected. There is no site plan review, environmental review or DEC permit for having manure dumpsters. Doesn't like potential impact on wetlands and stream. Photographic map submitted with application, in May of 2000 2 swept out dumpsters next to retaining wall and in the back corner of the property 4 horse trailers, another horse trailer and dumpster. A section was undeveloped. Now that has been filled in with stone and at

least a dozen dumpsters have been added and 3 dumpster hauling trucks up front. The expansion that happened last year and this year and the additional dumpster business had impact and should have come under review. For the past 7 years Mr. Manning has done whatever he wants without a site plan review. I ask for a site plan review and determine if manure dumpsters are conforming use within the zone. Further Morrissey's in Pawling has only one dumpster, a county listing for horse business available trucking and manure hauling are listed separately, the second should not be allowed in the zone even though the first is already there. I asked the Zoning Officer if she could determine if this was an additional non-conforming use.

Nancy Brusie – Zoning Officer - Interviewed Judge Manning, walked over the property. Since November, when I became Zoning Officer I found that nothing had changed. The records are almost non-existent and based on what Mr. Manning told me, I found that the complaint was not valid. Ms. Loughlin asked what information did she have to work with? Nancy Brusie - The building file had minutes, approval from the Town Board. There was nothing further. In the interview that I had with Mr. Manning I was satisfied that there was no change in the use of the property.

Allan Rappleyea – Attorney for Judge Manning – Cordbally, Gartland and Rappleyea – Reviewed records understand the complaint as additional use. He really means the intensification of the use. The dumpsters are the question. There are two dumpsters for sweepout purposes. Has been in Amenia since 1987 doing business. The Zoning Board determined that this was a service business. The roll off containers is part of the business and does not entail the storage of manure. There is no storage of manure on site. Mr. Nelligan complaint that this facet of Mr. Manning's business is not consistent with what was approved in 1987. I submit it is. When reading the resolution it is broadly written. The roll off business has been there for 13 years. In conclusion this use is entirely consistent with what was approved 17 years ago.

Judge Manning - When we built the new building we moved the entire parking lot. We were too close to the wetlands and the DEC asked we remove the fill, which we did and the charges were dropped. I applied and was granted a permit to operate a buffer zone.

Mr. Clark - This map dated 2000 and suggests that in 2000 the area that is filled in had not yet been filled in. Mr. Manning - There were two additional houses that are no longer there. I purchased the Maddsen house and the Bush house that burned. 1998 is the violation. Mr. Nelligan - No indication of dumpsters in the DEC paperwork. There are two large dumpsters filled with manure all the time and now there is additional dozen. No permits were ever applied to keep dumpsters in a wetland buffer zone. Mr. Manning - The DEC has answered 3 or 4 anonymous complaints and the DEC knows those two dumpsters are there. The permit DEC asked for was to dig a trench for an electric line to the trucks. Mr. Clark - How long have you had containers for the manure business?

Mr. Manning - Since 1991. Mr. Clark - Has there been in recent time an additional non-conforming use on the property, which requires action from the town. Conversation between Nancy Brusie and Judge Manning she concluded no there wasn't. Mr. Nelligan is asking to look at that opinion and agree or not with it. There is a legal point according to town law we review the Zoning Officer's decisions, we do not review the Zoning Officer's judgment. A decision leads to action, a judgment does not. Ms. Brusie has not rendered a decision that affects an action that will be taken or not taken. In her view there has not been a change. Mr. Nelligan - Presented picture of the back of building.

After Mr. Bush's house was bulldozed last year much stone was brought in and expanded as a parking area. Zoning Law states any change in the lot requires a site plan review. He changed the lot and brought in additional 10 dumpsters. The impact of the dumpsters over the long haul is tremendous. It is right next to a park. Ms. Loughlin - What is the impact of the dumpsters. Mr. Nelligan - Nitrates, phosphates, organisms, and odor from the two dumpsters. There is a change to the property so their needs to be a site plan review. Mr. Rappleyea - It is not appropriate to present to the Zoning Board information that was not presented to Ms. Brusie. How can the Zoning Officer make an appropriate determination without first seeing all the material? Give your information to the Zoning Officer; let them make a determination, then if you don't think that they are right then go to the Zoning Board of Appeals. The issue of site plan approval in reading the resolution permitting the business use in approving a horse transportation business and conclude that there will never be manure on site is difficult inference to get. The two sweep out dumpsters are made of steel and any manure cannot get into the stream. The roll off dumpsters do not contain manure. Mr. Clark - Has the nature of the business so intensified that we need to take a look at it and find out if it is an appropriate use and appropriately run. Ms. Brusie found that is not the case. You have said under oath that this business has not become more intense. Judge Manning - I go to great efforts to improve our operation and make a property that people would be proud of. The business has not intensified significantly over the past two years. Mr. Nelligan - That parking area was created to bring in at least a dozen more dumpsters. There should be a site plan review to expand the parking area. Mr. Eschbach - In 1987 the Zoning Board declared that a permitted use. The Zoning Ordinance says where there is a non-conforming use you must go through that criteria in order to expand, however says nothing about expanding a conforming use. Mr. Clark - We can't go back 10 years. Parking has been expanded since 2000. Judge Manning - About 2001 we had a permit to demolish Madsen house. Margaret Quinn - I grew up in Amenia and remember what Wilson and Eaton's was like, Mr. Manning your place is one of the nicest sections in Amenia. Mr. Eschbach - I was over to Mr. Manning's and those dumpsters are clean.

MOTION THAT THE ZONING ADMINISTRATOR MADE THE RIGHT DECISION WAS MADE BY Rudy Eschbach, seconded by Katie Loughlin.

ROLL CALL TAKEN - ALL IN FAVOR

MOTION THAT THE FINDINGS OF FACT AND RESOLUTION OF MAUREEN ROONEY, CASE #2004E AND ROBERT AND DARLENE RIEMER, CASE #2004J AT LAST MONTHS MEETING BE ACCEPTED WAS MADE BY Rudy Eschbach, seconded by Katie Loughlin.

ALL IN FAVOR

MOTION TO APPROVE THE MINUTES OF AUGUST 11, 2004 AND SEPTEMBER 8TH, 2004 WAS MADE BY Katie Loughlin, seconded by Rudy Eschbach.

ALL IN FAVOR

The next meeting will be November 17th.

BARBARA BISHOP - Seeking hardship variance for property on Bog Hollow Road presented the findings of fact of the April meeting. Mr. Clark - Issues were environmental impact, safety of the driveway, engineer's report and impact on the neighborhood. Would like to go through material in order to better render a decision. Continue on the November 17th meeting. .Notice must be sent to the neighbors so that they may be present.

MOTION TO ADJOURN MEETING WAS MADE BY Rudy Eschbach, seconded by John Quinn.

ALL IN FAVOR

Meeting adjourned.

Respectfully submitted by,

Susan M. Metcalfe
Zoning Board of Appeals Secretary

The foregoing represents unapproved minutes of the Town of Amenia Zoning Board of Appeals from a meeting held on October 13, 2004 and are not to be construed as the final official minutes until so approved.

_____Approved as read

___x___Approved with: deletions, corrections and additions

Revised 12/15/04