



# TOWN OF AMENIA

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(845) 373-8860 x106 Fax (845) 373-9147

Zoning Board of Appeals  
Thursday Oct 26, 2006  
7:00 pm. (court room)

Loughlin, Joseph

Use Variance

Loughlin Way  
Wassaic, NY  
12592

Other Matters; if needed

Minutes-

Adjourn.

**ZONING BOARD OF APPEALS  
THURSDAY, OCTOBER 26, 2006**

**PRESENT:** Chairman Rudy Eschbach  
Judy Velletri  
Norm Cayea  
David Rosenberg  
Michael Hayes, Attorney

Katie Loughlin - recused

The meeting was opened at 7:00 P.M. for a continuance hearing of the Loughlin Property. As the applicant requested the meeting, be continued at the October meeting. The meeting was called to order with all present at 7:10 P.M.

**LOUGHLIN, JOSEPH – USE VARIANCE – LOUGHLIN WAY, WASSAIC, NY**

Chairman Eschbach asked the Loughlin's if the application that the ZBA has is the appropriate one. Nancy Brusie and Lana Anguin-Cohen reviewed it. He then asked the applicant to present the rationale and reasons for asking for this use variance.

Katie Loughlin asked Chairman Eschbach to clarify what is a use variance. She then continued stating that Mr. Duncan has been on our farm for the past six years. We have not been able to continue our farm activities due to this violation of December 2005. We are asking for the variance so that we can continue to be an agricultural farm. Chairman Eschbach read the definition of a use variance according to Section 267 – 1 a and b. Basically that is to use the property for something other than what it is allowed under the current zoning code for the Town of Amenia. What is the rationale for not being able to conduct agricultural business, mend fences, have a fruit and vegetable stand Ms. Loughlin stated that Mr. Duncan because of the violation hanging over them, would not start any of these projects as he may be ejected at any 30-day interval. Ms. Loughlin further stated that she did not do any of these things without Mr. Duncan being there. She needed his assistance in doing her work around the farm. Brad Schwartz, Attorney representing Mr. O'Brien spoke to the Board regarding the use variance.

Ms. Loughlin brought up an issue regarding Crop Production Services and the variance, which was granted. The variance Crop Productions was allowed was a building variance to expand the present building on that property. It was not a use variance as in this case.

Mr. Duncan was located at the old Barlow Farm, which is now the O'Brien Farm. Mr. O'Brien asked Mr. Duncan to leave after he purchased the farm. Mr. Duncan came to the Loughlin Farm and asked to rent the space. At the time Mr. Duncan moved his operation from the Barlow/O'Brien farm to the Loughlin farm no one voiced an objection or compliance/non-compliance on his move.

Nancy Brusie spoke to the Board. She enforces the regulations as they are on the books today. Although the new CPIC plan is a good one, it is not in force today and may not be passed in the near future. Therefore, one must look at the code that is in force today.

Tom Warner was sworn in. He was concerned that if the variance was passed would this set a precedent. Chairman Eschbach said it could set a precedent.

Chairman Eschbach needed to go back into the financial aspect of this variance. The Loughlin's have not operated the fruit and vegetable stand because Mr. Duncan's business is in violation. Ms. Loughlin stated that was correct. If the violation were not in place would the farm be operated as a farm? Ms. Loughlin stated that she needed the assistance of Mr. Duncan in operating the fruit and vegetable stand. There is an operational financial hardship as a stand-alone entity. The farm today consists of 19 acres.

Brad Schwartz, representing Mr. O'Brien stated that the applicant could not meet the standard of a "use variance".

The Board then went into Executive Session. Michael Hayes, Esq. then spoke to the Board. They discussed under Article VIII, Section 121-38 (B), subsection (1), (2), and (D) and New York State Town, Village and City Laws Section 267-b (2)(b) (1) the applicant cannot realize a reasonable return, provided the lack of return is substantial as demonstrated by competent financial evidence; (2) 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; (3) that the requested use variance, if granted will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self created. Items 1 and 2 are not met and possible item 4 is questionable. A vote on granting the use variance was taken.

Following are the results of that vote:

	YES	NO	ABSTAIN	RECUSED
Norm Cayea		X		
Katie Loughlin				X
David Rosenberg		X		
Judy Velletri		X		
Chairman Eschbach		X		

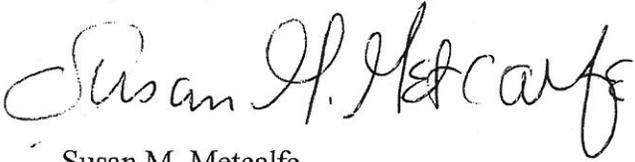
The Board came out of Executive Session.

Chairman Eschbach felt that personally this was a very sad case. The Board felt the same way

MOTION TO ADJOURN THE MEETING AT 8:30 P.M. was made by David Rosenberg.

VOTE TAKEN – ALL IN FAVOR

Respectfully submitted,



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 26, 2006 and are not to be construed as the final official minutes until so approved.

Approved as read  
 Approved with: deletions, corrections and additions

1-10-07