



## TOWN OF POESTENKILL

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### Zoning Board of Appeals

#### ZONING BOARD OF APPEALS

August 18, 2020 Minutes  
Poestenkill Fire Hall

Attendees:

Paul Jamison, Chairman  
Kevin McGrath  
Tim Hoffay  
Susan Kalafut  
Nicole Heckelman

Chairman Jamison opened the meeting at 7:00 pm with the Pledge of Allegiance.

**Public Hearings:**

**Ernest Molina (continued)**  
**125.-11-11**

**Area Variance (Alpacas)**  
**1 Clement Drive**

Chairman Jamison asks if there are any audience members who wish to speak in favor or against this application. The Board has already received the petition with neighbors in support, a neighbor spoke in support at the Hearing on July 21, 2020 and no comments against the application have been received. Mr. Molina submitted revised site plan to address the Boards concerns from the last meeting. Motion was made by Member Kalafut to close the Public Hearing. Motion was seconded by Member Heckelman and passed with a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

Motion by Chairman Jamison to approve an Area Variance to:

- 1) Allow two (2) alpacas on a 0.75 acre lot where two (2) acres would be the minimum required,
- 2) Allow the lean-to structure for said alpacas be located 110' from a neighboring structure where 200' would be the minimum required,
- 3) Allow the lean-to structure to have a setback of 25' from the nearest lot line where 50' setback would be the minimum required and
- 4) Allow the required security fence be placed against the Applicant's residence where a 100' setback would be the minimum required.

And with the following Conditions are made a part of this approval:

- 1) Condition 1: The required fence, though allowed to be against the Owner's residence, must remain at least 100' from other neighboring residences and
- 2) Condition 2: Variances are issued conditionally for a one (1) year period, to address any neighbor concerns which may arise if the alpacas create more of a disturbance than anticipated. If complaints are reported to the CEO or the Zoning Board within this period, a re-application for the variance will be required.

All voting members completed the Area Variance Findings and Decision form for this application.

After considering all of the mandatory area variance factors, **Board Member Hoffay** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* – No, if animals are proven to be properly maintained in trial period.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* – No, animals need required fencing and structure.
- 3) *Whether the requested variance is substantial.* – Yes, area variances from 2 acres to 0.75 acres, with required setbacks reduced substantially.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* – No, “animals” will be maintained properly.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* – Yes, requested livestock in residential neighborhood.

After considering all of the mandatory area variance factors, **Board Member Kalafut** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the or detrimental to nearby properties.* – No. No undesirable changes are anticipated, no neighbors voiced any complaints – in fact a petition supporting the request was received.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* – No. The lot is only 0.75 acres not allowing any other alternative that would be conducive to supporting the animals.
- 3) *Whether the requested variance is substantial.* – Yes. Footage 0.75 acres instead of 2 acres.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* – No, no physical or environmental conditions currently anticipated.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* – Yes, Owner wants alpacas as pets.

After considering all of the mandatory area variance factors, **Board Member McGrath** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* – No, neighbors in favor.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* – No, existing lot is too small 0.75 acres where 2 acres is required.
- 3) *Whether the requested variance is substantial.* – Yes, 0.75 acres where 2 acres is required.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* – No, animals will be fenced in and maintained.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* – Yes, Applicant wants the animals, not required

After considering all of the mandatory area variance factors, **Chairman Jamison** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* – No, Alpacas are reportedly tame animals more akin to dogs than other farm animals, structures are consistent with the neighborhood.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* – No.
- 3) *Whether the requested variance is substantial.* – Yes. Very substantial differences from Code, but Code was written to consider much larger/noisier/smellier animals.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* – No. If it does, we have the one year clause.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* – Yes, this is a desired, not a required addition to the property.

After considering all of the mandatory area variance factors, **Member Heckelman** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* – No. Having farm animals in a neighborhood area, fencing close to property, need to be 100 ft. away, like large dogs, quiet animals.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* – No. Needs variance because of lot size 0.75 acres, needs 200 ft. from neighbor, has 110 ft., 0 ft. from owner's property.
- 3) *Whether the requested variance is substantial.* – Yes. Needs setbacks, 1 year probationary period.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* – No. animals are maintained, fenced.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* – Yes. Placing animals in residential area.

Chairman Jamison polled the members for their responses. Variances approved by a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

*Resolution: Area Variance granted with Conditions, Planning Board to be notified of said Conditions.*

Louis Basle  
69 Abbott Drive

Code Interpretation  
125.-11-17.11 (14 Abbott Drive)

Applicant Lou Basle recounted the history of the site, stating that the site has been an albatross for years. He said that since 1984 there has been many activities not in accordance with the Town Code. Of particular note was the requirement of “screening” with the first Town permit, which has never been done to date. Stated when Kronau subdivided the parcel, the Town allowed 2 non-conforming parcels to be created. The sites were meant for nice homes, not industrial use. Mr. Basle read the Town Code 150-76 aloud and stated while

Kronau “might” complying with the Code, he may not “...enlarge, altered, extended, reconstructed,...”. Further, Mr. Basle stated that per Town Code 150-76, (3) the property may not “...change to another nonconforming use without prior approval by the Zoning Board of Appeals...is of the same or a more restrictive nature”. Mr. Basle says Kronau runs four (4) separate businesses – i.e., construction, sales and service of industrial construction equipment, real estate and land developer. Further, Mr. Basle stated that the building was built with two (2) stories. He concluded with a summary that 1) the noise is a constant problem as it is supposed to be between 7 am to 7 pm and very often before 7 am with the trucks warming up, backing up with their alarms, 2) the required screening was never put up even after all these years, 3) additional businesses have been added to the site against the Town Code, and 4) the existing building is too big per the Town Code. Abutting land owner, Keith Davis, told the Board about the extensive noise from the trucks and equipment, that it sounds like an industrial park when they are all going. He recounted how he reached out to previous Supervisor and then the previous Code Enforcement Officer – all without relief. Mr. Davis stated that this situation was not what he bargained for and that he cares for his Mom who has dementia and all of the noise and commotion is very disrupting to her. He states her corner bedroom is 150’ from the trucks.

Mr. Kevin Kronau addressed the Board with a brief history of his business and the site. He stated that he bought the property for his part-time business because the Town informed him that he couldn’t have at his home on Snake Hill Road. He bought Quickway Excavation, that had original farmhouses out by the road. He stated when purchased there was a used garage, 16’ tall with machine parts scattered all over the acreage. Eventually, this building was converted into 4 apartments, he built another apartment building and with these changes, the property for construction was reduced. He stated the shop was built with a building permit for a two-story building with small offices, own equipment serviced downstairs, much more equipment was obtained, that the upstairs is used for offices but he’s not there very much and that he may not even renew his Realtor license the next time as he doesn’t pursue listing, just his own projects, no people visiting the site/offices. Further, Mr. Kronau stated that he had building permits for all work performed on site, without any problems. The sales of equipment is run by his son, Chip Kronau, and should be considered no different than servicing their own equipment, that there is not a big lot with things to see. At this point, Mr. Kronau asked the Board to keep this Public Hearing open until its next meeting so that he may have this attorney join him. Chairman Jamison agreed to holding the Public Hearing open. Mr. Chip Kronau addressed the Board to explain his excavating business, that his tries to limit the noise by having the trucks loaded at night and sometimes is called out for public emergencies for water/sewer repairs in Menands, North Greenbush and Poestenkill. He feels he is respectful of others, that with COVID, many jobs have been shut down and in fact, had his worked spend a week cleaning and organizing the equipment, pipe, etc. He does say there is construction materials out and about but no equipment is stored on the opposite side. He has 2 employees, truck drivers, that he’s not processing materials, there are no “trips” all day but rather in the morning and out in the evening, that there is staff in the offices and that when he spoke to previous Supervisor and Code Enforcement, he was assured he was a “grandfather use”.

Chairman Jamison stated that ~~if there is any question regarding the use of parcel, Mr. Kronau should come to the~~ the correct place to appeal a decision of the CEO is the Zoning Board of Appeals and not the ~~Code Enforcement Officer~~ Town Supervisor. Chip Kronau restated that

the use of the property is “grandfathered” in. Mr. Basle stated that the operation had been enlarged, changed, that the sales and service has a very nice website for the sale of industrial equipment and that a New York State DMV Inspection sign is attached to the building. Chairman Jamison stated that while the excavating business might have been allowed, any changes or new uses would require a Special Use Permit from the Planning Board or a Use Variance from the Zoning Board of Appeals and referred to the Land Use – District Schedule of Use Regulations shows these other entities are not allowed. Chairman Jamison further said that it is the use changes that that Mr. Basle’s is complaining about. Mr. Kevin Kronau countered that there was no place in the Town for businesses if Code is interpreted strictly, that people can’t work here. Chairman Jamison stated he saw the point Mr. Kronau was making but it is the Board’s job to enforce the Code, that the Board is the only body that can overturn a Cease & Desist order from the Code Enforcement Officer. Town Supervisor, Keith Hammond, asks why this is still an issue – i.e. noise complaint, real estate, minutia are all add-ons. Chairman Jamison stated that according to the Code, the specific use in place at the time of implementation is grandfathered, not for generic ‘commercial use’, but is still trying to get all of the facts. Steve A. Valente asked the Board if the Kronaus need a Special Use Permit at this time. Chairman Jamison said he doesn’t know just yet, that the excavating was grandfathered but the question is whether the other businesses require a Special Use Permit, or even a Use Variance. Mr. Steven A. Valente strongly disagrees with Chairman Jamison’s comments and feels there should be no issue to review after all these years. Kevin Kronau said he thinks he won’t renew his real estate license if that is an issue. Chairman Jamison stated the if the sales and services were not in existence, they should not be allowed. There are multiple noise complaints which is what is probably driving the complaints about the use, but that the use question is valid. Steve A. Valente stated it’s a commercial building, parks his equipment, so he sells some equipment, there’s no big deal, so stop making it a big deal. Steven R. Valente asked Chip Kronau about the ability to muffle the back up alarms on the trucks. Chairman Jamison stated that a SUP would go to the Planning Board, that the noise has been and continues to be a complaint, and that the site use was permitted but with any changes, may not now not be permitted. Chairman Jamison and the Board hold the Public Hearing open until September 8, 2020.

*Resolution: Public Hearing stays open until September 8, 2020*

Joseph Hitchcock  
137.-1-23.12

Planning Board Interpretation Request  
160 Lynn Rd. – firewood/sawmill

Chairman Jamison read the Public Hearing Notice into the record and advised the audience that the only issue before the Board is whether the business at 160 Lynn Road could be considered “retail” within the Town Code. He stated that the Planning Board is considering Mr. Hitchcock’s Special Use Permit and has asked the Zoning Board of Appeals to give an Interpretation of “retail” with regards to the application – specifically, does Mr. Hitchcock’s business qualify as a Retail use such that it would be eligible to apply for a Retail Special Use permit from the Planning Board? Chairman Jamison read an email from Robert Ryan discussing his stance on why the business was not a retail business.

Applicant’s attorney, Linda Mandel-Clemente – argued with Chairman Jamison’s comment that the Planning Board made any determination with regards to her client, specifically with regards to email from Planning Board attorney, Robert Ryan, outlining the Planning Board’s

opinion on what constitutes a “retail” service, that no one on the Planning Board requested this interpretation during the open meeting and that if her facts were true, then the email from Robert Ryan should not be considered by this Board.

*(note: Chairman Jamison made a verbal request to the Planning Board Chairman and Clerk for their interpretation, which seemed reasonable to him since they (the Planning Board, and not Mr. Hitchcock) made the request for interpretation to the ZBA. He does not know how they arrived at the decision to have Mr. Ryan send the email in question)*

Ms. Mandel-Clemente gave a summary of her client’s actions previous to this meeting. She stated that her clients applied for a Special Use Permit from the Planning Board, for goods and services for sale for profit, that in practice, the Town hasn’t excluded her client’s business and equates the processing of wood into firewood to the cutting of fabric off a bolt . Further, she objects to the continued use of “wood processing” or “sawmill” by the Town as it does not accurately describe her client’s business and that the cutting of wood is incidental to the selling of wood. Ms. Mandel-Clemente stated she was unaware that Bob Ryan was asked by the Planning Board to give an interpretation, that it was not requested during the meeting, is not an official order and should not be considered by the Board. She continued that the activity of selling goods for profit involves many other activities such as timbering other properties and that cutting the wood is a necessity as customers order different sizes of firewood. She referred to Town Code section #150-4 Definitions that does not specifically exclude the making of firewood and states that the Applicant has maintained screening and buffering on-site by not removing some trees. She stated that if the “noise” is the only consideration, it would be deemed average, background noise, noises typically heard in a rural residential area, that residents in such an area would use firewood and that such sounds would fit in along with tractors, timbering and lawn mowers. The business is a retail use with expected noise, that cutting wood is normal in such area and if doing it for commercial use, not personal, why is a Special Use Permit required?

Chairman Jamison opens the floor to the public and asks that the discussion stay focused on whether or not the business can be considered retail. Resident Steven A. Valente questioned the Board about why is there a problem now, that it has been there a long time. Chairman Jamison states there has been many complaints of noise, that Town Code Enforcement Officers have issued multiple “Cease & Desist” orders which Mr. Hitchcock has ignored and that the Board’s role is interpretive, not enforcement. Resident Patrick Bradley states that “the complainer” didn’t come to this meeting, that mowing lawns and dogs barking are very common and that from his residence, he can hear noise from the work site better than those who have complained. Mr. Bradley continues with that the neighbors don’t mind the noise, that the site is well-kept and Joe (Mr. Hitchcock) is a good neighbor. He asks the audience members to please stand up if they want the business to continue, approximately twenty people stand up. Mr. Bradley states that the noise from the site is no different than bailing hay.

Resident Steve R. Valente stated that if this business doesn’t meet the criteria, if the Code excludes firewood, there is a problem. He stated that half of the Town needs and uses firewood, that there are twenty supporters here to show the business is needed, that it would be wrong not to allow and it should fall under the category of retail sales. A woman from the audience stated that there are farms in the area and questioned why this business is covered

under those rules. Chairman Jamison stated there are agricultural regulations that deal differently. Mr. Bradley argued that this is a retail business, Joe is a great neighbor and the only commercial zone in the Town is by the airport and if property is not zoned for commercial, it's forest land. Chairman Jamison states that foresting is irrelevant and that the trees are delivered to the site. Mr. Bradley stated that they need the firewood, they don't hear noise and need the wood to heat with all winter.

Ms. Mandel-Clemente stated that the zoning regulations are sketchy, that the Zoning Board can not enter rules if they are not statutory and that the Zoning Board of Appeals has a narrow issue before it – does the definition specifically exclude the retail sales, that it is not processing, the wood is only sliced, very similar to the slicing of fabric and that no one would say that the use of the blade would mean it is not retail. She is hearing comments from the Board that changes the actual use, that the size of equipment is not an issue and it's irrelevant because the Code doesn't specifically deny the business. She further stated that if we presume the Code doesn't specifically exclude the business, then the ruling of the Board must be in favor of the Applicant. She stated that the Town Board can change the Code or they could make addition that excludes cutting of the wood but as drafted, the Code has a very broad definition, which her client fits in. Chairman Jamison disagreed with Ms. Mandel-Clemente, saying there are multiple issues surrounding the sales and processing. Ms. Mandel-Clemente countered that twenty-one people indicated they buy firewood from her client, as does the Dinosaur BBQ and the business produces sales tax revenue.

Planning Board Chairman, Tom Russell, rejoined the meeting at this point and stated that the Boards are not trying to take away Mr. Hitchcock's business but that there are on-going problems with the operation, that he has serious reservation to compare the business to retail. He further stated that he is very pro-business, a small business owner himself and that he wants to listen to others. He said they are not trying to prevent the sale of firewood and was open to several options such as moving the operation, reducing the hours and noise from the operation and is open to other possibilities but there has been, and continues to be complaints from the area and disagrees with the idea of "retail" designation. Audience members started arguing with Mr. Russell and Chairman Jamison direct all, audience and Mr. Russell to direct their comments to the Board only. Corrine Bradley stated that Joe is not there very often, this is a waste of everyone's time, that on Saturdays Joe is there maybe noon to 3 pm. She wants to know where the complainers are tonight, why aren't they there. Chairman Jamison answered that complainers didn't need to be there. Mr. Bradley continued with statement that the complainers are louder than Joe and that they won't answer phone calls to discuss. Ms. Mandel-Clemente stated she wanted complete copies of all complaints and needs the Public Hearing to be extended so she may respond to the new information (letter from Mr. Ryan, Planning Board Attorney). A woman who identified herself as a former girlfriend of the Applicant stated that he is very considerate, has been known to give free wood when it's needed, that he doesn't start early or work very late and that he is an honest man. Steven R. Valente again stated that this business should be allowed. Chairman Jamison said that if the Board agrees that it is not retail and the Planning Board does not grant a Special Use Permit, then the remedy would be for Mr. Hitchcock to apply for a Use Variance and that he too is open to other avenues. He was not suggesting there be no business but maybe it should move. Mr. Hitchcock stated timber business is retail.

Chairman Jamison and the Board agrees to continue the Public Hearing until September 8, 2020 and states the Board will go into Executive Session to consult with their Attorney, Jack Casey. Ms. Mandel-Clemente objects saying the Board can only get legal advice from Counsel, there can be no further discussion, that the only questions that can be asked is in regard to if cutting wood is separate from retail. Steven A. Valente told Chairman Jamison that he shouldn't be going into Executive Session, rather keep the conversation out in the open. Mr. Hitchcock states that he does all the splitting at the same time, that it is not a constant activity. Tracy Church, Town CEO, stated with the most recent complaint, he visited Joe and reminded him that the "Cease & Desist" order was still in effect, that there have been more complaints regarding the cutting/splitting and he has all the documentation on his computer. Further, Mr. Church stated that he and Bob Brunet had given Mr. Hitchcock the Special Use Permit application to help him get things going.

*Resolution: Public Hearing stays open until September 8, 2020*

Motion by Chairman Jamison to move into Executive Session at 9:30 pm to consult with the Town Attorney. Motion was seconded by Member Kalafut and was approved by five (5) ayes, zero (0) nays and zero (0) abstentions. Motion by Chairman Jamison to exit Executive Session with no votes taken at 10:15 pm. Motion was seconded by Member Hoffay.

There being no further business, a motion to adjourn the meeting was made by Member Kalafut, seconded by Member Heckelman and approved by five (5) ayes, zero (0) nays and zero (0) abstentions. The meeting was adjourned at 10 :15 pm.

Respectfully submitted,

Lynn E. Kane, Secretary