



**TOWN OF HURLEY  
ZONING BOARD of APPEALS  
PO BOX 569/10 WAMSLEY PLACE  
Hurley, New York 12443  
[planning@townofhurley.org](mailto:planning@townofhurley.org)  
(845)331-7474 Ext. 6**

**Draft Minutes for 2022-02-08**

**Present:** Josh Vogt, Chair; Member Alex Marra; Member Kara Snyder; Member Andrew Shapiro

**Absent:** Member Orin Shands;

Also Present: Paul Economos, Zoning Enforcement Officer; Matt Jankowski, Town Attorney, Deb Dougherty, Town Board Liaison

- I. Chair Josh Vogt called for a motion to open the meeting at 7:00PM and asked everyone to stand for the Pledge of Allegiance and acknowledged a quorum of Members was present.
- II. 7:02PM-Chair Josh Vogt motioned to open the meeting; Member Alex Marra seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

**III. 7:04PM-Public Comment**

Chair Josh Vogt called three (3) times for public comment. There being none, Chair Josh Vogt motioned to open and close public comment; Member Alex Marra seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

**IV. 7:05PM-Public Hearing:**

1. File 2024-#01-Derby-SBL-38.10-5-20-AV

10 Broad St; R-2 District/0.35 acres

Date of ZEO Determination 2023-12-20; date received-2023-12-28

Need: SEQRA classification; set public hearing

Matt Derby, Property Owner and Harmony Water, Contractor were present to represent the file

**Applicant Statement**

The Property Owner stated he wishes to build an outdoor space for an office. He is unable to meet the setbacks as his lot is considered a corner lot under the Town of Hurley Zoning Law.



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**ZEO Statements**

No additional statements

**Official Actions**

7:06PM-Chair Josh Vogt motioned to open the public hearing; Member Kara Snyder seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

**Board Statements/Questions**

- Chair Josh Vogt asked the ZEO to confirm the lot is pre-existing, non-conforming for lot coverage at 13,000 sq. ft., correct? ZEO Paul Economos answered that is correct.

**Public Comment**

No members of the public were present and the Clerk confirmed she had not received any emails

7:07PM-Chair Josh Vogt motioned to close the public hearing; Member Kara Snyder seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

7:09PM-Zoning Board review of the request against the criteria for an Area Variance:

In making its determination regarding a request for an area variance, the Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.



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Board Discussion: The lot in question is a pre-existing under-sized lot. The proposed structure will not be visible from the road or by neighboring properties. Allowing the construction of the studio in its proposed location, will not cause the lot coverage to exceed the allowed amount.

Determination: The Board determined that the Applicant has done the best he can to fit the proposed studio into the lot so that it doesn't cause a detrimental effect on the character of the neighborhood even though it will not meet the required setbacks. Having reviewed all materials submitted, reviewed the Applicant's rationale and the fact that there were no objections from any neighbors, the Board determined that there will not be any undesirable change on the effect of the character of the neighborhood nor will there be a detriment to nearby properties by granting the two (2) requested Variances.

[2] Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.

Board Discussion: The Board reviewed all applicable materials, took the recommendation of the ZEO who conducted a site visit to determine if there were alternative options of placement of the proposed accessory structure.

Determination: The Board reviewed any other possible scenarios feasible to the Applicant other than the granting of the variance for a proposed 12x20 structure to be used as a studio and determined that there are no feasible options. The fact that the lot is under-sized and is a corner lot as defined in Chapter 210-5 of the Town of Hurley Code leaves no other alternative other than the requested Variances.

[3] Whether the requested area variance is substantial.

Board Discussion: The request for a 12'x20' accessory structure to be used as a studio by itself is not a substantial request. This request is further hampered by the fact that as a corner lot, it is required to meet two (2) front setbacks which reduces that available area.

Determination: having considered all possibilities of character, options available against the actual Variance numbers, the Board determined the request is not substantial.

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Board Discussion: The Board determined that there would not be negative impacts to the environmental and physical conditions on the property.

Determination: The consensus of the Board was that there would not be negative impacts to the environmental and physical conditions of the property by allowing the construction of the proposed twelve-foot (12') by twenty-foot (20') accessory structure to be used as a studio with the required two (2) variances of a ten-foot (10') front-yard variance and a forty-foot (40') rear-yard variance

[5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board but shall not necessarily preclude the granting of the area variance. (b) The Board, when granting an area variance, shall grant the minimum variance that it shall deem necessary and adequate to alleviate the difficulty shown by the applicant and that also will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.



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Board Discussion: The Applicant discussed that he needs more room for his family, a situation that is not self-created and that with the lot being under-sized and that as a corner lot is required to meet two (2) front setbacks, there are limits to where the studio can be placed.

Determination: Having weighed all the factors in the Variances request against the laws in the Town of Hurley Code and the possible positive and potentially negative physical and environmental factors, Member Alex Marra motioned to approve the two (2) variance requests: Variance A-a front-yard variance of ten feet (10') to Fairview Avenue and; B. a forty-foot (40') rear-yard variance to the rear property-line; Member Andy Shapiro seconded the motion. With the motion having been made and seconded, there was a call for a vote. The Clerk conducted the following is a Roll Call of the members present:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by a vote of four (4) Ayes, Zero (0) nays, One (1) Absent, Member Orin Shands; and Zero (0) Abstentions and the Variance request was approved with no conditions.  
Conditions: None

V. 7:15PM-PM-Old Business-None

VI. 7:16PM-New Business:

1. 7:16PM-File-#02-DoglasTrust-SBL-55\_2-1-8-Appeal

Appellant Address: 8 Dug Hill Rd

Subject Property: 55\_2-1-8-1756 Hurley Mtn Rd/A4/5.9Acres

ZEO denial: 2023-12-05; Appeal submitted: 2024-01-04

Need: SEQRA Classification/Determination; Public Hearing

Shawn Kemp, ESQ. was present to represent the Complainant/Applicant

Michael Moriello, ESQ. was present to represent the Property Owners: Andrew Zell and Lee Winnie

Applicant Statement

Mr. Kemp stated he made a formal complaint regarding the use of the property at 1756 Hurley Mtn. Road, owned by the Applicant. He further stated ZEO Paul Economos inspected the property and stated he did not see any activities outlined in the complaint: illegal burning, noise from excavators and therefore found the complaint to be unsubstantiated. He believes the use of the Property is not consistent with what was represented during the 2014 Appeal and that there is a true public, health and safety matter related to the activities. He observed open burning, the vehicles and machines are noise pollution and there is a NYSDEC stream that could potentially be being damaged

Mr. Kemp stated his client has complained that he believes the uses on the property are not allowed uses as Agricultural use, which the property is classified as.

The previous appearance in front of the Planning Board on 2014-06-02 stated the following: "Mr. Andrew Zell was present. Mr. Zell presented a map of a parcel of land he may possibly purchase on the corner of Hurley Mountain Road/Dug Hill Road and is owned by Evan Matthews. The parcel is in the A-4 District. The A-4 District allows soil mining, with a Special Use Permit but the A-4 already is in Agriculture District. The



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proposal is to grow small trees along the proposed road to buffer the one adjoining property owner, and to stockpile mulch, top soil, and other landscaping materials with possibly a loader parked on the parcel.

There is no plan for any buildings, parking/storing any other heavy equipment, i.e. dump trucks, etc. Mr. Michael Mariello is representing Mr. Zell and he interprets this proposal fits as Agricultural use.

Mr. Zell notes that Lee Winne is his business partner and will only use his products from his tree business. He will only sell their products. This is strictly a farm land usage in Hurley.

Mr. Sorensen suggested that Mr. Mariello do a write up on the actual plan. The Planning Board suggests that Mr. Zell contact Glenn Hoffstatter with the proposal for his recommendations/comments."

Mr. Kemp further stated that there are shipping containers, large trucks and burning that he believes are inconsistent with what was represented to the Planning Board and the Use should be reversed.

Mr. Mike Moriello, representing Messrs. Zell and Winnie stated there was never an Application before the Planning Board. On 8/14/2014 they did as was suggested and got an Interpretation from CEO Glenn Hoffstatter. CEO Hoffstatter replied on 9/4/2014 with the following:

"RE: Zoning interpretation for Property (SBL 55.2-1-8) Dug Hill Road Hurley, New York.

Dear Michael:

I am in receipt of your letter and supporting documentation dated August 19, 2014 requesting an Interpretation with regards to a proposed agricultural use located at the property referenced above. The referenced property is located in the A-4 District according to the Town of Hurley, Zoning Map. Section 210-10 of the Town Zoning Code states, Permitted uses in A4 districts shall be in accordance with the Table of Use Regulations. The Table of Use Regulations states the an Agricultural Use (not including the keeping of fowl or farm animals) is a Use Permitted by Right in the A-4 District. With regards to your request, it is my Interpretation that the use of the referenced property as an agricultural nursery as defined as a "Crop" under section 301-a 2 d (Horticultural Specialties) of New York State Agriculture and Markets Law would be a use permitted by right and that Site Development Plan and Special Use Permit approvals are not required. However, if by employ you mean to import top soil, mulch, compost or other organic matter to be ground, screened, mixed or processed on site and then used or sold offsite, my opinion is that this would not be considered an "agricultural use" pursuant to section 301-a(16) of the Agriculture and Markets Law of New York State and not an allowable use in the A-4 district."

Attorney Moriello on behalf of Messrs. Zell and Winnie appealed that Determination to the Zoning Board of Appeals, which was received on 9/24/2014.

On 11/14/2014 the following was sent to Mr. Zell: "Please be advised your Interpretation, based upon the appeal of C.E.O. Hoffstatter, of your proposed use of property at 90 Dug Hill Road, Hurley, N.Y. falls within the definition of farm operation pursuant to New York Agriculture and Market Law and within the Town of Hurley Zoning Law was considered by the Town of Hurley Zoning Board of Appeals at your public hearing on November 13, 2014. The Board voted to approve your appeal." Attorney Moriello stated there was never an Application before the Planning Board. Messrs. Zell and Winnie appeared before the Planning Board in 2014 to give the Planning Board a summary of what they will be doing. He further stated Planner Alan Sorenson suggested they get an Interpretation from CEO Glenn Hoffstatter. They did that. They disagreed with that Interpretation and filed an Appeal within the required timeframe of 30 days as required in the Town of Hurley Code. That process was followed legally per the Code. The Zoning Board of Appeals overturned CEO Hoffstatter's Determination. This Use is established through the appropriate, legal process. This is not the venue for a new neighbor to now try to stop the Use. The Use is legally established and any timeframes to appeal that have passed. If there are nuisance issues related to the Use, appearing before this Board is not the venue for that. The Use itself cannot be challenged just because a new neighbor decides they don't like it. Perhaps a piece of the Use can be challenged, but the current Appeal filed by the Applicant asks the Zoning Board to look at the Use for legality. That can't happen.



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**Board Statements/Comments/Questions**

- Chair Josh Vogt stated first for the Record that the Appeal was timely: ZEO Paul Economos made his Determination on 2023-12-05, the Appellants submitted their Appeal on 2024-01-04;
- Chair Josh Vogt stated it is the Board's job to step into the Shoes of the ZEO and determine what occurred and if what the Appellant is alleging has merit and if so, what is the solution
- Member Alex Marra questioned if there was ever an Application before the Planning Board?- See Attorney Moriello's response above
- Chair Josh Vogt stated based on what has been submitted from both sides, it appears there is enough of a record to continue
- Member Kara Snyder stated she would like to do a site visit-Mr. Andrew Zell stated he is not comfortable having people on the property without someone there for liability reasons. Attorney Moriello stated he would help facilitate the Board being able to visit the property.

**Applicant's Statements**

Mr. Andrew Zell, owner and operator of the business along with Mr. Lee Winnie were both present and stated that much of what Mr. Kemp stated was completely un-factual. There is never burning occurring ever. Mr. Kemp and his client may not see Agricultural use the way it truly happens. We supply many farms with necessary materials, we have other Agricultural properties, we met with the property to understand their concerns, previous inspectors for the Town of Hurley: ZEO Tom Tryon and MCO Eric Kitchen came to the Property several times and found no merit as did ZEO Paul Economos and MCO Troy Ashdown, we believe the Appellant is trying to bully us out of here. We were originally doing this on the Gill farm. We lease the land we currently use because I don't want people to know my home address so they don't come there for the business. The Appellant could have looked on Google Earth before buying the property and they would have seen exactly what is there today. We produce mulch, that requires a grinder. We deliver mulch-that requires loaders and trucks. We are local people trying to run a valid business and we are constantly being forced to spend money involving Mr. Moriello which eats into our profit.

**Official Actions**

Chair Josh Vogt motioned to hold a public hearing on 2024-03-14 at 7:11PM or thereafter as the Agenda allows and directed the Clerk to post as required; Member Kara Snyder seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

1. 7:54PM Approximately 7:45PM File 2024-#03-Madonna-SBL-55\_4-6-12\_1-AV  
Property Address: 46 Dewitt Mills Rd/R1/1.1 acres  
Building Permit Date: 2024-02-01; ZEO denial date: 2024-02-04; Application received 2024-02-05  
Need: SEQRA Classification/Determination; Public Hearing  
Kevin Madonna was present to represent the file  
Applicant Statements  
Applicant stated he wishes to construct a garage and he does not meet the side setback. He has no other location to move it as his septic is in the rear of the property and the property has a steep incline.





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**Consultant Questions**

ZEO Paul Economos asked what room in the house would the garage enter into; would it be a bedroom?

Answer-no

**Board Questions/Comments**

None

**Official Actions**

Member Kara Snyder motioned to accept the application as complete, classify it as a Type II action under SEQRA and schedule a public hearing for 2024-03-14 at 7:11PM or as the Agenda allows thereafter; Member Andy Shapiro seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

1. File-#02-DoglasTrust-SBL-55\_2-1-8-Appeal  
Appellant Address: 8 Dug Hill Rd  
Subject Property: 55\_2-1-8-1756 Hurley Mtn Rd/A4/5.9Acres  
ZEO denial: 2023-12-05; Appeal submitted: 2024-01-04

**Official Actions**

Mem Andy Shapiro motioned to modify the previous approved motion regarding the time of the public hearing to be held on 2024-03-14 from 7:11PM to 7:20PM or thereafter as the Agenda allows with the same directives to the Clerk regarding noticing; Chair Josh Vogt seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

VII. 8:04PM-Decisions: None

VIII. 8:05PM-Minutes



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Chair Josh Vogt motioned to approve the 2024-01-11 minutes with edits; Member Alex Marra seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

IX. 8:10PM-Action items: None

X. 8:11-ZTF Report-Chair Josh Vogt stated there is a new ZTF committee. It includes Planning Board Chair Peter McKnight; Himself, ZEO Paul Economos, Attorney Matt Jankowski, Tracy Kellogg, Town Clerk. He asked if members had any items they want addressed and should send a list.

Suggestions:

- Fix membership issues-make years of terms match the number of Members
- Fix the definition of Resort vs Cabin development
- Fix the allowable size of a residential use ground-mounted system

XI. 8:22PM-Correspondence: None

XII. 8:23PM-Other Business: Chair Josh Vogt stated that the Supervisor sent him 6 possible ZBA candidates, 2 specifically requested to be considered for the ZBA: Inez-Architect, may be more suitable for the Planning Board and Liston Freeman-was on the Zoning Board in another State. Chair Josh Vogt told ZBA Liaison Deb Dougherty that the Board would like to fill the 2 open seats with the 2 candidates that requested the ZBA even though by law it must be for 5 years. The terms can be amended when the ZTF fixes the ZBA structure.

8:23PM-ZEO Paul Economos left the meeting

8:23PM Matt Jankowski, ESQ. left the meeting

- Clerk Maggie Colan stated the Supervisor asked the Board to decide if they want to start recording the ZBA meetings and post them on the website. All Members present felt to be as open as possible, it is a good idea.

This will start at the 2024-03-14 meeting

XIII. 8:27PM-ZBA Vice-Chair-

Official Actions-Member Kara Snyder motioned that Member Orin Shands be Vice-Chair for 2024; Member Andy Shapiro seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent





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Kara Snyder	Aye
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Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

XIV. Next ZBA meeting: Thursday, March 14, 2024/ Submission deadline: Thursday, February 29, 2024

XV. 8:31PM Adjourn

**Official Actions:**

Chair Josh Vogt motioned to adjourn the meeting; Member Andy Shapiro seconded the motion. There being no discussion and the motion having been made and seconded, the motion was thereupon called to a vote, which passed with the following record of votes:

Member	Vote
Joshua Vogt, Chairman	Aye
Alex Marra	Aye
Andrew Shapiro	Aye
Orin Shands	Absent
Kara Snyder	Aye

Motion was carried by four (4) AYES; Zero (0) Nays, One (1) Absent, Member Orin Shands; and 0 Abstention

**Adjourn at 8:33PM**

Respectfully submitted,

Maggie Colan, Clerk

Dated: 2024-02-23

Approved: