

**MINUTES OF MEETING
PHIPPSBURG PLANNING BOARD
December 8, 2009**

MEMBERS PRESENT: Mark Hawkes, Clifford Newell, Robert Smith, and Marie Varian, Chairman.

1. Meeting was called to order at 5:00 pm. Quorum was declared.
2. **Elisabeth von Huene, 28 Main Road, Tax Map 01, Lot 32, Village District, 50' setback.**

A. Change of Use of a Non-Conforming Structure. Applicant submitted a new application requesting that the use of her property be changed from a commercial use to a residential use. Considered under Section 12.C.4 of the Shoreland Zoning Ordinance.

Applicant submitted a statement that the change in use would not have an adverse impact on the surroundings in response to the requirements in the above-referenced section of the Shoreland Zoning Ordinance. She also submitted a sketch showing where she proposed to locate her home business.

Varian stated that the change in use should be considered very seriously because it would create very significant new limitations on the property.

Varian asked the Applicant what was the basis of her opinion that there would be no adverse impact on the surroundings. How did she know that it won't? What is her analysis? Applicant stated that the business was so bad right now there was a strong possibility that she would go out of business. Therefore, the impact would be less than it is now.

Varian suggested specific changes that should be considered and perhaps included in an analysis of the impact of the change, e.g., change in amount of water used on a daily basis; change in amount of time that the Applicant would be on the premises on a daily basis, etc. She stated her question again: "Why do you think that a residential use of the property would have less impact?"

The Applicant stated that she did not know how to answer the question. She couldn't foretell the future. However, it seemed to her that if she were in residence she would have more time to improve the property. If the property remained commercial, in order to be able to afford to live somewhere else, she would have to expand the business and hire more employees, which would have more impact. She would also be forced to rent out some of the space to others, which would require planning board input.

Varian asked the Applicant if she uses toxic materials in her business. Applicant responded that she uses oil paint, but much less than one would use to paint a house. She said that she uses paint thinner, but very small amounts—she never pours

anything toxic down the drain; she recycles all her paint thinner. Varian asked what she does with the sludge. Applicant responded that the sludge dries up and she takes it to the dump.

- B. Determine Whether Business Entity is a Home Business.** Varian noted that, under Section 15.G.2.c of the Shoreland Zoning Ordinance (p. 20), it was required that the home business be “clearly secondary to the use of the dwelling unit for residential purposes.” According to the sketch provided by the Applicant, the business would occupy 46 percent of the total area (1,412 SF out of total of 3,072 SF). Varian asked the Board members if these square footages raised any questions about whether the business use was “clearly secondary.” Smith asked if there was any way that the Applicant could restrict the business to the 800 SF studio addition. Applicant reported that it was not possible. Smith said that it was not clear that the business use was clearly secondary. Applicant explained that she had a drafting table and another work bench, flat files, matt board storage. Also, dust is created, and the dust can’t be where the materials are stored.

Varian referred to Section 15.G.2.a., which states that “No unreasonable nuisance, traffic congestion, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation shall be generated.” She stated that she assumed the number of parking spaces was unchanged since the original commercial use. Applicant confirmed that that was true.

Varian noted that the Applicant would have to adhere to the signage limitations in residential usage, as described in Section 15.G.2.b, “Signs shall be restricted one on-premise totaling not more than eight (8) square feet.” Applicant confirmed that she would.

Varian noted that the regulations limit employees to two and that the sale of antiques is included in the list of businesses that may qualify as home business (Section 15.G.2.f.i). Varian also noted that that list describes the qualified activities as those that “have no significant impact on the character of a residential neighborhood.” This phrase limits what items could be kept outside of the residence in the normal course of business.

Varian reiterated that, in order for a home business to be allowed in a residential property, it has to be “clearly” secondary to the residential use.

Varian referred to Section 16.G.3: “Structures that have not been used for residential purposes for more than five (5) years shall be considered new residential structures and shall require an occupancy permit.” Varian asked the Applicant if she had any questions about what she would have to do in order to obtain an occupancy permit. Applicant asked if she would be required to move all her commercial material out of the premises before she got an occupancy permit, or, could she get an occupancy permit, and then move it out. Varian responded that this question wasn’t related to the obtaining of an

occupancy permit; rather it was relevant in connection with meeting the criteria of a home business.

Varian asked the Codes Enforcement Officer to tell the Applicant what she has to do to get an Occupancy Permit. He replied that the two big things he was aware of that would be needed in order for him to issue a Certificate of Occupancy are: (1) smoke detectors and (2) sprinkler system at points of ignition (Section 16.B.3.a & b of SZO).

Applicant stated that she was not aware of the fact that if the use was changed to residential, the requirements would be as if the building was a new structure, and, therefore, she was not aware that a sprinkler system would be required. She stated that she would have to research this to see if this was feasible and whether she still wanted to get the change in use.

Varian pointed out that homeowners are allowed 4 yard sales a year, which allows them to put things outside during those times.

The Board then discussed any other issues that could affect whether the application is approved. Conclusions are listed below:

- Board is satisfied that the change in use would not have a greater impact
- Applicant will remove any signage that doesn't comply with the regulations for a home business
- Consensus was that leaving one or two items outside on a regular basis would be ok, and more than that would be too much
- The ratio of commercial to residential space as shown in the sketch submitted was acceptable, but commercial space could not be expanded.
- Applicant has explained what she does with toxic sludge and Board is satisfied with that.
- Board can give Applicant some flexibility about moving business materials into the commercial space, but there would be a limit of a couple of months.
- Outstanding issues are the necessity for (1) moving things around so that the ratio of commercial to residential space is maintained and for (2) installation of a sprinkler and smoke alarm system.

Hawkes moved to table the discussion until the January meeting. This would give the Applicant time to complete her research. Newell seconded the motion, which was passed unanimously.

3. **Minutes of November 10, 2009.** Smith moved to accept minutes as corrected. Hawkes seconded the motion, which was passed unanimously.
4. **Announcements:** Varian announced that there would be a special town meeting at 6:00 on the following night, December 9, 2009.
5. **Adjourn.** Newell moved to adjourn. Smith seconded. Motion was passed unanimously.

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Meeting was adjourned at 6:15 p.m.

Respectfully submitted,

Channa A. Eberhart
Secretary