

Mike Farrell, Vice Chairman of the Town of Peru Zoning Board of Appeals, called the meeting of October 15, 2008 to order at 7:04 pm.

**ROLL CALL:**

|                             |           |
|-----------------------------|-----------|
| WALTER RUSSELL, CHAIRMAN    | : Excused |
| MIKE FARRELL, VICE CHAIRMAN | : Present |
| ROB BASHAW                  | : Present |
| LEON BLAIR                  | : Present |
| FRANK DENCHICK              | : Present |
| TOM FUSCO                   | : Absent  |
| ROY ZALIS                   | : Present |
| LAWRENCE BOSLEY (ALT)       | : Present |
| JAMES FALVO (ALT)           | : Present |
| ATTY. THOMAS MURNANE        | : Present |
| CEO. PAUL BLAINE            | : Present |

**APPROVAL OF SEPTEMBER MINUTES:**

**MOTION:** Mr. Falvo made a motion approve the September minutes. Second by Mr. Blair.

**ALL SO MOVED.**

**MOTION CARRIED.**

**PUBLIC HEARING:**

- 1. APPLICATION:** TODD DEYO  
Requesting a Use Variance for a Mining Operation on Sullivan Rd.

Mr. Lashway stated that to the south there is an existing mine that is permitted by the DEC and will be exhausted shortly. Mr. Lashway stated that the applicant also has submitted an application to the DEC for a mining operation on the north side of the current mine. Mr. Lashway stated that new mine will use the same access road that the current mine uses. Mr. Lashway stated that the sand from the mine is being used by farmers in Essex and Clinton County for their dairy operations and there are anywhere from 8-14 loads per day being taken out of the pit. Mr. Bashaw asked how long Mr. Jeremy Deyo has owned the property. Mr. Deyo stated that he has owned the parcel for about 2 years. Mr. Bashaw asked if it was his intention at the time of the purchase to use the area as a mining operation. Mr. Lashway stated that because of the wetland to the north and east, the land has minimal use. Mr. Lashway stated that the area could be

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developed into lots but because of the wetlands, the only access would be from the south. Mr. Bashaw asked Mr. Lashway why the applicant feels that the use is not self-created. Mr. Lashway stated that it is not self-created because the property has minimal use. Mr. Bashaw stated that 2 years ago however, if he knew that the property had minimal use, then why did he not apply at that time because if the Variance were not approved then he would not have purchased it. Mr. Lashway stated that the area of the property could be used for timber as well but that would be the only other use besides mining the area because of the wetlands that surround it. Mr. Falvo asked how many acres on Sullivan Rd. Mr. Deyo owned. Mr. Lashway stated that he had a total of about 65 acres. Mr. Falvo asked Mr. Lashway what the value would be of that parcel if Mr. Deyo were to subdivide it and sell it. Mr. Falvo asked how much land would be developable on the other side of the current mine. Mr. Lashway stated that there would be about 10 acres at the greatest that could be developed. Mr. Murnane stated that it would also depend on how much frontage there would be on the parcel as well but that cannot be determined from the map. Mr. Falvo stated that they would need more information regarding the sale of the property to prove to the Board that a mine would be the only use on the property. Mr. Lashway stated that the only value would be for the landowner to the south because he is the one with access to the area. The landowner to the east cannot access it due to the wetlands. Mr. Farrell stated that Mr. Lashway has shown proof of how much the parcel is worth if it were to be used as a mining operation, but it is not showing how much the parcel is worth if it were to be sold. Mr. Lashway stated that what he is trying to show is that the applicant did not create the hardship but it is a natural hardship because of the wetlands and the accessibility to that parcel. Mr. Bashaw asked Mr. Lashway how many acres are in the mine itself. Mr. Lashway stated that the acreage for the mining operation is approximately 12 acres out of the 65 acres. Mr. Murnane stated that in the information it should show that Mr. Deyo couldn't get a reasonable return from the property if he were to sell it. Mr. Denchick asked Mr. Lashway if Mr. Deyo was not able to mine the parcel, if he had any other way to get the sand needed to the farmers. Mr. Lashway stated that the sand being mined is very unique, that it is used solely for farmers. Mr. Blair asked how long the mine would last if the variance were to be approved. Mr. Lashway stated that the mine would last for about 10-15 years. Mr. Murnane asked how long the existing mine has been operating for. Mr. Lashway stated that the current mine has been running for about 16 years. Mr. Blair asked what would happen to the farmers if the current mine runs out. Mr. Lashway stated that the sand is a resource that the dairy farmers have been relying on for years. Mr. Murnane asked how long the permit for the DEC lasted. Mr. Lashway stated that the permit from the DEC was a 5-year permit. Mr. Lashway asked if they could have the application tabled until the November meeting.

**MOTION:** Mr. Bashaw made a motion to table the application until the November meeting. Second by Mr. Falvo.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Bashaw-yes, Mr. Denchick-yes, Mr. Zalis-yes, Mr. Falvo –yes, Mr. Farrell- yes.

**MOTION CARRIED.**

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**2. APPLICATION:**

MARK ROBINSON

Requesting an Interpretation of Section 602 of the Zoning Ordinance.

Mr. Blaine stated that Mr. Robinson was seeking an interpretation of the definition of a structure and specifically if an Outdoor Wood Boiler is a structure and should be regulated by the Zoning Ordinance for setback. Mr. Blaine stated that he did provide a copy of a technical bulletin from the Department of State that states that an Outdoor Wood Boiler is an appliance and not a structure. Mr. Blaine read from the Zoning Ordinance the definition of setback, building, structure, and accessory structure. Mr. Blaine stated that even though it is incidental to a main building it is more of an appliance and it does not fit under the definition of a structure. Mr. Blaine stated that in his opinion an Outdoor Wood Boiler is an appliance not a structure. Mr. Robinson stated that he believes that an Outdoor Wood Boiler is an appliance but also a structure. Mr. Robinson stated that in the definition of a structure it states that it is anything with a fixed location on the ground and he believes that an Outdoor Wood Boiler does have a fixed location because you first pour a concrete pad and it is also very hard to move. Mr. Robinson stated that he also believes that an Outdoor Wood Boiler is attached to a permanent structure because the plumbing goes directly from the Outdoor Wood Boiler to the house. Mr. Blaine stated that he believes that a concrete pad is a structure and if the Outdoor Wood Boiler needed a concrete pad then the Zoning Ordinance would regulate it. Denis Mason stated that as far as needing a concrete pad for the Outdoor Wood Boiler, a Outdoor Wood Boiler does not need a concrete pad but could use cement blocks or just be placed on the ground. Mr. Mason stated that the new local law that was passed has a larger setback than anything stated in the Zoning Ordinance as far as setbacks are concerned. Lynda Lamountain stated that she would like to know if the town could make Outdoor Wood Boilers a Zoning issue. If those who are unhappy with the new Local Law can file an appeal through the Zoning Board of Appeals. Mr. Murnane stated that any taxpayer of the town could file an application for an Interpretation of the Zoning Ordinance with the Zoning Board of Appeals. Mr. Murnane stated that the Zoning Board of Appeals does not have any control over the new Local Law that has been passed by the Town of Peru and they do not have any jurisdiction over what the Town Board does. Someone could file an Article 78 with the Supreme Court of Clinton County to appeal the Local Law made by the Town of Peru. Mr. Robinson asked if the Boards decision would have an effect on the Local Law that was passed by the Town of Peru. Mr. Murnane stated yes, that if it is decided that an Outdoor Wood Boiler is a structure, then the Board would either have to follow the Local Law set in place by the Town of Peru or the setbacks that are set in the Zoning Ordinance, however, if it is decided that an Outdoor Wood Boiler is an appliance then the applicant has to follow the setback of the Local Law and the Zoning Ordinance has no authority over it. Mr. Matott stated that he would suggest that the Board view an Outdoor Wood Boiler as an appliance and not a structure. Mr. Robinson stated that it was not his intention to cause any confusion with the interpretation and asked if he could withdraw his application. Mr. Murnane stated that he can withdraw the application if he chose to do so.

**MOTION:** Mr. Bashaw made a motion to withdraw the application. Second by Mr. Bosley.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Bashaw-yes, Mr. Denchick-yes, Mr. Zalis-yes, Mr. Falvo –yes, Mr. Farrell- yes.

**MOTION CARRIED.**

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**3. APPLICATION:**

ROLAND KOKENBURG

Requesting a Special Permitted Use for Construction of a Single Family Residence in a Com Zone.

Mr. Blaine stated that Mr. Kokenburg wanted to construct a small garage or a storage shed on the property but they cannot have an accessory structure without a primary structure so they discussed placing a single family home on the property and in review of the property it was found that the parcel was located in a com zone. In a com zone, a single-family residence is considered a Special Permitted Use. Mr. Blaine stated that the application was referred to the Clinton County Planning Board and they did reply back stating that it was a Local issue and it was also submitted to the APA who stated that it did not require a permit from them. Mrs. Kokenburg stated that the lot has been vacant for about 20 years and they would prefer to have a smaller home. Mr. Bashaw asked Mrs. Kokenburg what the size of the lot was. Mr. Kokenburg stated that the lot size is about 1 ½ acres. Mr. Denchick asked Mr. Blaine if the lot had any other Zoning issues. Mr. Blaine stated that the lot did not have any other Zoning issues. Mr. Zalis asked if the applicant had permission from the owner to come before the Board. Mr. Blaine stated that the applicant does have a letter and a signed contract with the owner.

**MOTION:** Mr. Denchick made a motion for approval. Second by Mr. Blair.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Bashaw-yes, Mr. Denchick-yes, Mr. Zalis-yes, Mr. Falvo –yes, Mr. Farrell- yes.

**MOTION CARRIED.**

**4. APPLICATION:**

GORDON DAVIS

Requesting a Use Variance for an Agricultural Use in a Com Zone at 3407 Lake Shore Rd.

Mr. Blaine stated that the potential purchaser of the property was looking to place an agricultural use on the property. Mr. Blaine stated that in researching the property there is a structure on the property that was currently being used as an agricultural use and there was a building permit issued for it and at the time the building permit was issued they were contacted to address the issue, which they are now trying to do. Mr. Blaine stated that there are two applications in front of the board for the property; one for a Use Variance for an agricultural use where it is not permitted and one for an Area Variance. Mr. Blaine stated that the application was referred to The Clinton County Planning Board who replied back stating that it was a Local issue but submitted comments with it as well. Mr. Blaine stated that addressing the Use Variance, the agricultural use is not allowed in a com zone. Mr. Blaine stated that there are three parcels owned by the Davis' and that is shown on the map. Mr. Blaine stated that the building that was issued the building permit is an accessory building without a primary structure but if the first 2 parcels are merged together it will resolve that issue of having an accessory building without a primary building. Mr. Blaine stated that the second application was also referred to the Clinton County Planning Board who replied back with comments stating that it was a Local issue. Anne Porter was present at the meeting on behalf of the Davis' and stated that she does not know what could be done with the house on 24 acres because they have had several showings of the property and nobody wants it unless they can have animals and have no use for the extra acreage. Mrs. Porter stated that they were informed that several properties adjacent to the property were part of a family farm. Mrs. Porter stated that the family that owned the property before the Davis' used to hay the fields and the Davis'

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have continued to have it hayed and also had their horses on the property. Mrs. Porter stated that the 21 acres across the railroad tracks that have been hayed and that there is also an existing apple orchard adjacent to the parcel. Mr. Blaine stated that he was not aware at the time he asked for a Use Variance that there was continued agricultural use on the property and the Board may want to view it as a non-conforming use and review the area variance application. Mr. Murnane asked what the agricultural use was for again. Mr. Blaine stated that the Davis' have a pole barn with a few horses along with chickens and the proposed owners would like to have an alpaca farm and maybe a few horses. Mr. Murnane asked where the horses are being kept. Mrs. Porter stated that the horses have been moved over to the Lyons rd. because Mr. and Mrs. Davis moved to a property on Lyons Rd. Mr. Bashaw asked if this application was for Dr. Davis. Mrs. Porter stated that the applicant is Dr. Davis. Mr. Bashaw decided to recuse himself from the application. Mrs. Porter stated that the Otis' which are the neighbors to the south next to where the barn is have submitted a letter stating that they do not have a problem as to where the barn is located or that there is an agricultural use on the property. Mr. Bosley asked what the purchaser's intent was with the alpacas. Mrs. Porter stated that she believed they raised them as a hobby but she was not sure to what extent they raised them. Mr. Murnane asked Mrs. Porter if the Davis' had any objection to merging the parcels. Mrs. Porter stated that they do not object to merging the parcels but if they do not get the Variance, there is still a building right and they do not want to give up the building right. Mrs. Porter stated that if they were going to merge all the properties and sell it all together then it would not be a problem but if the Variance is not granted the property would be very hard to sell. Mrs. Porter stated that in the building permit that was given, it states that the Pole Barn was being used as a Tack Room, which implies that there would be animals on the property. Mr. Blair asked what the Tack room was used for. Mrs. Porter stated that it would be used for storage of horse supplies. Mr. Blair stated that wouldn't necessarily be agricultural because there are no animals being placed in the Pole Barn. Mr. Falvo asked if the agricultural use was continuing, then couldn't they rule it as a continuing use that was non-conforming. Mr. Murnane stated that if the board decides that there was not a continuation of the agricultural use, then the applicant needs a Use Variance in order to have the agricultural use. If the Board decides that there is a continuation of an agricultural use that pre-dates the Zoning Ordinance, then that would be considered a pre-existing non-conforming use and would not require a Use Variance.

**MOTION:** Mr. Bosley made a motion that this is a pre-existing non-conforming use. Second by Mr. Denchick.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Denchick-yes, Mr. Zalis- yes, Mr. Falvo – yes, Mr. Farrell- yes.

**MOTION CARRIED.**

**5. APPLICATION:**

GORDON DAVIS

Requesting an Area Variance for an Agricultural Structure within the 100ft Setback of the property at 3407 Lake Shore Rd.

Mr. Blair asked how many animals the Davis intended to have on the 4-acre parcel. Mrs. Porter stated that she did not know how many animals there were going to be but they were not going to be on the 4 acres, they were going to be on the back 20 acres. Mr. Blair stated that he believes all of the parcels should be merged, the pole barn should not be used as an agricultural use and they

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would be able to build a barn on the back 20 acres. Mr. Murnane stated that technically they would have to make a motion that the front two parcels be merged as well; otherwise they would have to have another Use Variance having an accessory structure on a lot without a primary structure. Mrs. Porter asked if they could approve the Area Variance with the condition that the front two parcels be merged together. Mr. Murnane stated that if they decided that they were not going to use the pole barn as an agricultural use, and then they would not need an Area Variance but they would still need to merge the 2 parcels because they cannot have an accessory structure without a primary structure.

**MOTION:** Mr. Falvo made a motion to approve the application with the condition that the front 2 parcels be merged. Second by Mr. Blair.

**ROLL CALL:** Mr. Blair-no, Mr. Bosley-no, Mr. Denchick-no, Mr. Zalis- yes, Mr. Falvo –no, Mr. Farrell- no.

**MOTION DENIED.**

**6. APPLICATION:**

RICHARD NEPHEW

Requesting a Use Variance for a Veterinary Hospital at 692  
Bear Swamp Rd.

Keith Matott was present on behalf of Richard Nephew. Mr. Matott stated that this application was brought before the Clinton County Planning Board and that he is part of the Clinton County Planning Board but he did not act on this application. Mr. Matott stated that the parcel is formally Key Auto Sales on Bear Swamp Rd. across from Crickets Restaurant. Mr. Matott stated that the property has been vacant for quite some time and that Mr. Nephew has been approached by Plattsburgh Animal Hospital to open a Veterinary Hospital on the property. Mr. Matott stated that he provided a definition of an animal hospital for the Board and that the property would not be used for boarding purposes but specifically for Veterinary purposes. Mr. Matott stated that also in the packet, he included a picture of the existing signposts where the sign is going to be located and a picture of the sign on Rt. 3, which it will look similar to. Mr. Matott stated that he also included pictures of several businesses surrounding the area and that he considers this area to be a transitional neighborhood. Mr. Matott read from his application the reasons why the Use Variance is necessary. Mr. Matott stated that Mr. Nephew has been leasing to the railroad on a month-to-month basis that has been storing parts in the two-car garage section of the building. Mr. Falvo asked if there was going to be any outdoor fencing. Mr. Matott stated that there would be no outdoor fencing or kennels.

**MOTION:** Mr. Blair made a motion to approve the application. Second by Mr. Denchick.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Bashaw-yes, Mr. Denchick-yes, Mr. Zalis-yes, Mr. Falvo –yes, Mr. Farrell- yes.

**MOTION CARRIED.**

**7. APPLICATION:**

ELIZABETH CUMMINGS

Requesting an Expansion of a Non-Conforming Use at 3845  
Rt. 9.

Mr. Blaine stated that the applicant would like to expand her agricultural use on the property. Mr. Blaine stated that Mrs. Cummings also is in the setback area; therefore she also has to apply for an Area Variance. Mr. Blaine stated that the application was submitted to the Clinton County Planning Board and they did reply back that it was a Local issue. Mrs. Cummings stated that there was a 30ft tree line buffer between her property and her neighbor's property.

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**MOTION:** Mr. Zalis made a motion to approve the application. Second by Mr. Bosley.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Bashaw-yes, Mr. Denchick-yes, Mr. Zalis-yes, Mr. Falvo –yes, Mr. Farrell- yes.

**MOTION CARRIED.**

**8. APPLICATION:**

ELIZABETH CUMMINGS

Requesting an Area Variance for an Agricultural Structure within the 100ft Setback of the property at 3845 Rt. 9.

Mr. Bosley asked if she could place the addition on the backside of the building. Mrs. Cummings stated that the footage would be the same size from the lot line whether the addition is placed on the side or on the back. Mr. Bosley asked if there is any way they could make the addition smaller. Mrs. Cummings stated that they could shorten the addition 4ft. Mr. Murnane stated that if they took 20ft off they would have a 56ft setback instead of a 36ft setback. Mrs. Cummings gave copies to the Board of her plot plan for her building permit to show the distance between the neighboring parcel and the addition she is going to place on her barn. The Board noticed that the dimensions were different then what had been stated on her Area Variance application. Mr. Blair asked the Board what they thought about approving the variance with the condition that they cannot go anymore then 50 feet from the lot line.

**MOTION:** Mr. Denchick made a motion to approve the application with a maximum of 50ft Variance on all sides. Second by Mr. Bosley.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Bashaw-yes, Mr. Denchick-yes, Mr. Zalis-yes, Mr. Falvo –yes, Mr. Farrell- yes.

**MOTION CARRIED.**

**9. APPLICATION:**

KENNETH MOUSSEAU

Requesting an Area Variance at 3752 Rt. 9

Mr. Mousseau was seeking an Area Variance to place a retaining wall along the lakeside. Mr. Mousseau stated that he is attempting to save what's left of the land due to erosion. Mr. Mousseau stated that he plans to place a 7ft tall retaining wall along the lakeside and place shot rock in front of it to keep the looks of the beach line the same as the rest of the gray stone along the beach.

**MOTION:** Mr. Denchick made a motion to approve the application with the condition of APA approval. Second by Mr. Falvo.

**ROLL CALL:** Mr. Blair-yes, Mr. Bosley-yes, Mr. Bashaw-yes, Mr. Denchick-yes, Mr. Zalis-yes, Mr. Falvo –yes, Mr. Farrell- yes.

**MOTION CARRIED.**

**ANY FURTHER BUSINESS:**

Mr. Blaine asked the Board if they would be available on another Wednesday at 7pm for training. The Board agreed that another Wednesday at 7pm would suffice. Mr. Murnane asked if it were possible to have a tax map along with the packets as well. Mr. Blaine also mentioned that at the next meeting, a picture of the Board would be taken to place on the new website that is being put together.

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**CEO REPORT: PAUL BLAINE**

Mr. Blaine stated that permits are up from last year. Mr. Blaine stated that there are 19 site build homes to date.

**ADJOURNMENT:**

**Motion Made by Mr. Blair.**

**Second by Mr. Falvo.**

**All so moved.**

*Date filed with Town Clerk \_\_\_\_\_*