

**Zoning Board of Appeals**  
**215 North Tioga Street, Ithaca, NY 14850**  
**Monday, March 16, 2009**  
**7:00 PM**

**Present**

Board Members: Kirk Sigel (Chairperson), Harry Ellsworth, Ron Krantz, James Niefer, David Mountin, Susan Mann (alternate, excused at 7:25 p.m.).

Staff Members: Carrie Coates Whitmore, First Deputy Town Clerk; Susan Brock, Attorney for the Town; Bruce Bates, Director of Code Enforcement; Jonathan Kanter, Director of Planning.

**Others**

Noel Desch, Noel Shaff, Ed Boutros, Kate Doerge, Lou LoVecchio, Paul Levesque, Robert and Virginia Powers, Dirk Galbraith, Chris Anagnost, Marty McElwee, Max Buckholtz, Daniela Bocioaga.

**Call to Order**

Chairperson Sigel called the meeting to order at 7:05 p.m. He welcomed everyone to the March meeting of the Town of Ithaca Zoning Board of Appeals and announced there were four appeals before the board. The appeals would be taken in the following order: 1) Daniela Bocioaga and Max Buckholtz; 2) Cayuga Medical Center; 3) Robert and Virginia Powers; 4) William Desch.

**APPEAL of Daniela Bocioaga and Max Buckholtz, Owner/Appellant requesting a variance from the requirements of Chapter 270, Article IX Section 270-71 A, Front Yard Depth requirement, of the Town of Ithaca Code, to be permitted to construct an addition that will encroach upon the front property line at 106 Pineview Terrace, Town of Ithaca, Tax Parcel No. 53.-1-15.24. Property is zoned Medium Density Residential. (MDR)**

Daniela Bocioaga and Max Buckholtz came before the Board and Chairperson Sigel asked if they wanted to add anything to their packet information. The applicants did not have anything to add.

Chairperson Sigel asked Mr. Bates what he determined the required front yard setback to be. Mr. Bates explained that a 25 foot setback is required for the front yard and the proposed porch would encroach 6 feet into the setback. Chairperson Sigel noted that the front yard setback would then be reduced to approximately 19 feet.

Board Member Mountin asked if the front entrance was the primary entrance to the house. Mr. Buckholtz indicated that it was.

Board Member Niefer stated that he drove by the house and it looked as if it were undergoing a major interior renovation. He asked the applicants if the proposed front porch would be an enhancement to the property. Mr. Buckholtz and Ms. Bocioaga felt

that it was. Board Member Niefer asked if the proposed porch was similar to other houses in the neighborhood. Ms. Bocioaga responded that the house across the street has a similar porch. Mr. Bates added that the same type of structure can be found throughout the neighborhood. He noted that if it weren't for the variation in the road, the applicant probably would not need an area variance. Board Member Niefer agreed; he felt the proposal was not inconsistent or detrimental to the neighborhood.

With no further questions or comments, Chairperson Sigel opened the public hearing at 7:11 p.m. and invited the public to address the Board. There being none, Chairperson Sigel closed the public hearing at 7:12 p.m.

Chairperson Sigel noted for the record that there was no SEQR review for the appeal. He then moved to grant the appeal of Daniela Bocioaga and Max Buckholtz with the conditions that the front yard setback be no less than 18 feet, that the porch be constructed as shown on plans submitted to the Board, and with the findings that all requirements of an area variance had been met, specifically listing how each criterion was satisfied. Board Member Niefer seconded the motion. Vote—Carried Unanimously.

ZB 2009-006

**APPEAL of Cayuga Medical Center, Owner/Appellant; Louis J. LoVecchio, Agent, requesting variances from the requirements of Chapter 221, Section 221-6 B(2)(b), of the Town of Ithaca Sign Law, to be permitted to maintain a second free-standing sign at 101 Harris B. Dates Drive, Town of Ithaca Tax Parcel No. 24.-3-2.1, Property is zoned Office Park Commercial. (OPC)**

Lou LoVecchio and Paul Levesque appeared before the Board. Chairperson Sigel stated that the applicant was before the Board to “cleanup” the February approval. He then asked Attorney Brock if the appeal can be remedied by making changes to the February resolution. Attorney Brock recommended adopting a separate resolution for the appeal.

Chairperson Sigel clarified that the Board was discussing sign “B”, which was the sign located along the private drive. He explained that the purpose of the appeal was to cleanup an inconsistency that Code Enforcement staff pointed out after the February meeting.

Chairperson Sigel opened the public hearing at 7:18 p.m. and invited the public to address the Board. There being no one, Chairperson Sigel closed the public hearing at 7:18 p.m.

Chairperson Sigel moved to grant the appeal of Cayuga Medical Center with conditions on sign square footage and configuration, and finding that all requirements of a variance had been met, specifically listing how each criterion was met. Board Member Krantz seconded. Vote—Carried Unanimously.

ZB 2009-007

**APPEAL of Robert N. and Virginia D. Powers, Owner/Appellant, requesting a use variance from the requirements of Chapter 270, Article IX, Section 270-66, Permitted Principal Use, of the Town of Ithaca Code, to be permitted a commercial use of a building located at 1458 Slaterville Rd. Town of Ithaca, Tax Parcel No.58.-2-28. Property is zoned Medium Density Residential (MDR) where commercial use is not permitted.**

Dirk Galbraith and Robert Powers came before the Board.

Mr. Galbraith proceeded to explain the appeal and stated that the property was previously a non-conforming use. The building was originally constructed as a barn and during the 1950s it served as a paint store. He noted that there were a variety of other commercial uses in the building until the time Mr. and Mrs. Powers bought the building. In 2006, Mr. and Mrs. Powers closed their business and retired. The downstairs portion of the building was not used for more than a year and as a result lost its grandfathered rights for commercial use. Mr. Galbraith explained that there are two residential apartments in the upstairs portion of the building, which continue to be rented. He stated that the rents from the apartment would not sustain the carrying costs of the building. Mr. and Mrs. Powers have attempted to sell the building, but have not been able to sell it in its current condition.

Mr. and Mrs. Powers obtained an estimate from McElwee Builders for renovating the building into a residential building with an accessory apartment. They have also provided the Board with an economic analysis, which indicates that the cost of converting the building to a conforming use at this time is not economically viable. Mr. and Mrs. Powers would like to obtain a use variance for the building to permit the downstairs to be rented for office use, which requires minimal interior construction.

Chairperson Sigel asked if Mr. Galbraith knew how many employees could reasonably work at the property. Mr. Galbraith thought 4 offices would be appropriate. Chairperson Sigel felt that 5 or 6 employees could work at the property. He thought the proposed use of the building was relatively light and would not generate a lot of visitors per day. Mr. Galbraith agreed; the proposed light office use typically does not attract walk-in customers. He added that the property has sufficient on-site parking.

Chairperson Sigel asked what would be the hours and days of use. Mr. Galbraith responded that the professional office-type use they are thinking about is typically open Monday through Friday, 9 am to 5 pm.

Mr. Powers proceeded with the presentation by explaining that he first visited the building in 1953 when it was Mandeville's Paint Store. The building later became a restaurant. During Mr. Powers's tenure on the Zoning Board, the Board denied permission for the restaurant to continue. The building then became offices and

workshop for a homebuilder. Mr. Powers stated that he and his wife bought the building in 1973 and ran their business there from 1973 to 2006. Their intent was to sell the building upon retirement, but they have not been able to do so.

Mr. Powers then asked if the Board had any questions. Board Member Niefer asked who would be maintaining the exterior of the property. Mr. Powers responded that they presently farm landscaping services out. Board Member Niefer commented that the exterior is well-maintained. Mr. Powers stated that there is one gentleman who mows the yard and another gentleman takes care of the pruning.

Chris Anagnost then came before the Board and stated that the Powers contacted him in May of 2007 to list the property for sale. He noted that it has been difficult to sell the property as a result of the economic downturn and the expiration of the grandfathered commercial use of the building. The building has been advertised extensively and the price has been reduced.

Mr. Anagnost asked if it would be possible for a business in the building to have Saturday hours.

Martin McElwee came before the Board and briefly explained the renovations that would be needed in order to convert the lower section of the building into livable space. The estimated cost of renovations was \$334,415. Chairperson Sigel thanked Mr. McElwee for his comments.

Chairperson Sigel opened the public hearing at 7:40 p.m. and invited the public to address the Board. Kathleen Doerge came before the Board and stated that she did not oppose commercial use of the building, but wondered if the use variance would be a permanent variance. Chairperson Sigel said that it would be a permanent change and would go with future owners. Ms. Doerge expressed concern over retaining the row of trees that serves as a buffer between her backyard and the parking lot of the Powers' building, and the possibility of a more intensive commercial use of the building. Chairperson Sigel responded that if the Board granted a variance, it probably would grant a variance that was specifically tailored to the current configuration.

Ms. Doerge reiterated that it was important to her to retain the barrier of trees between the two properties. She thought that lighting may be a problem in the future depending upon the use of the building. Chairperson Sigel explained that the Town has an outdoor lighting law that governs glare from lights, how lights can be pointed, etc. Mr. Kanter added that any change of use of the building would trigger site plan review by the Planning Board. The Planning Board would look at site plan issues during its review.

Chairperson Sigel asked if a change in tenant would trigger site plan review. Mr. Kanter responded not necessarily. He explained there was a provision in Town Code that requires site plan approval for any commercial use or change of commercial use for which no previous site plan exists. Chairperson Sigel confirmed that the Powers would need to receive initial site plan approval for commercial use of the building. The

building would then need to come back for modified site plan approval if the use of the building changed.

Board Member Krantz was supportive of the variance. He felt it was needed for a viable business, but that there needed to be restrictions put on use of the building.

Board Member Mountin asked if the intended use was to sell the building or to redesign and lease it for office use. Chairperson Sigel thought the applicant would try to simultaneously lease and sell the building. Mr. Galbraith confirmed that was the case.

Board Member Niefer thought the Board should keep in mind that the applicant was asking for office occupancy. He added that it was reasonable and if a future owner wanted to do something different with the building they would need to come back to the Zoning Board for another variance. Board Member Niefer favored granting the variance with the restriction that its use relate to office occupancy.

The Board then discussed the thresholds that trigger site plan review.

Chairperson Sigel noted that the public hearing was still open and asked if anyone else wished to address the Board.

Li-Hung Lin came before the Board and stated that she tried to purchase the building several times in the past. She was not ready to buy the building at this point, but was planning to use it for a real estate agency. Ms. Lin thought the building was wonderful because of the large back parking lot, and the distance between the neighbors and the building.

Chairperson Sigel closed the public hearing at 7:59 p.m. and solicited comments and questions from the Board. He stated that the appeal was well-qualified for a use variance. He thought the applicant met all of the criteria for a use variance.

Chairperson Sigel noted that a number of items on the SEQR form stated that there was not enough information for staff to make a recommendation. Mr. Kanter stated that if the Board decided to limit the use to office use, he looked up numbers from the Trip Generation Report that could be used for SEQR. The Institute of Transportation Engineer's Trip Generation Report, 7<sup>th</sup> edition, volume 3 indicates that for general office use, the weekday peak am hour generation by employee is 0.48 vehicle trips per employee; the weekday peak pm hour trip rate is 0.46 vehicle trips per employee. The daily weekday rate (over a 24 hour period) is 3.32 vehicle trips per employee. Mr. Kanter explained that if 6 employees were permitted on site then the Board could expect the following traffic impacts: weekday peak am hour -3 vehicle trips, weekday peak pm hour-3 vehicle trips, and approximately 19 vehicle trips per day total. Mr. Kanter noted that the estimated Saturday vehicle trips per day were much lower. He said that a typical single-family residence will generate approximately 10 trips per day.

Chairperson Sigel thanked Mr. Kanter and turned to SEQR review of the appeal. Attorney Brock suggested that Chairperson Sigel modify Part II of the Environmental Assessment Form before the Board votes on SEQR. Chairperson Sigel agreed.

Chairperson Sigel proposed the following changes to Part II of the Environmental Assessment Form:

- C1: Traffic will not be a problem because the anticipated number of car trips per day is approximately 20 (if the number of employees is limited to 6 or fewer for all offices in the building), which on the State highway is a very small number to add to the highway. No changes in air quality, surface or groundwater quality, solid waste production or disposal, potential for erosion, drainage or flooding problems are anticipated. The anticipated noise level from the proposed office use will not exceed, and will likely be less than, the noise associated with previous businesses that were more of a retail nature.
- C2: The property has been used as a commercial use for at least 50 years and that this use is less intensive than some of the uses in the past, and therefore will not constitute a change to the neighborhood character. In addition, one of the adjoining properties is a church and the property is located on a State highway.
- C3: No changes.
- C4: Change commercial use to office use.
- C5: There is no anticipated growth subsequent to development or related activities likely to be induced by the proposed action because the Board will specifically limit what is allowed on the site.
- C6: No additional long-term, short-term, cumulative or other affects not identified in C1-C5.
- C7: No other impacts including changes in use of either quantity or type of energy.

The Board agreed to suggested changes. Chairperson Sigel then moved to make a negative determination of environmental significance for the reasons stated in the Part II Environmental Assessment Form as modified. Board Member Krantz seconded the motion. Vote—carried unanimously.

ZB 2009-008

Chairperson Sigel moved to grant the appeal of Robert and Virginia Powers with conditions on business use, hours of operation, number of employees, vegetative screening, and site plan approval, and finding that all requirements of a use variance had been satisfied, specifically list how each criterion was met. Board Member Ellsworth seconded. Vote—carried unanimously.

**APPEAL of William Desch, Owner/Appellant, Noel Desch, Agent, requesting a use variance from the requirements of Chapter 270, Article VIII Section 270-54, Permitted Principal Use and Article XXVII, Section 270-220, Building Floor Area, of the Town of Ithaca Code, to be permitted to construct a land management camp at 131 Updike Rd. Town of Ithaca, Tax Parcel No. 47.-1-11.4. Property is zoned Low Density Residential. (LDR)**

Noel Desch came before the Board and stated that his son, William, was retiring and moving back to the area. He would like to construct a land management camp at 131 Updike Road. The land management camp would be used by William as he prepares the land for building a house. William planned to establish a nursery, plant fruit trees and establish a vegetable garden on the property. Mr. Desch noted that a nursery is a permitted use in the zone. He added that there were no commercial activities planned in conjunction with the nursery. Mr. Desch further stated that the Adirondack Park Agency Regulations for cabins permit a similar use.

Mr. Desch outlined that the appeal meets the hardship criteria as follows:

- 1) The Zoning Ordinance does not allow the applicant as a non-resident to realize a return on his investment in the property until his home is constructed on it;
- 2) The hardship is unique to the property and does not apply to a substantial portion of the neighborhood because it is already partially developed as a low density residential area;
- 3) The propose use variance will not alter the essential character of the neighborhood as documented in the three supporting letters from the nearest neighbors;
- 4) The hardship is partially self-created due to the economy and the applicant's move the Ithaca. The location of the cabin is dictated by the applicant's desire to avoid crossing the creek. The hardship is also dictated by the availability of storage of raw materials in the cabin;
- 5) The approval of the use variance will avoid growing or more serious hardships related to the cost of owning the land and by putting pressure on the owner to sell or subdivide the property.

Noel Shaff appeared came before the Board and stated that William Desch is his uncle and he would like him to be able to move back to Ithaca. He said that William needed the camp in order to take care of his land and thanked the Board for their consideration.

Mr. Desch then provided the Board with photographs of the proposed cabin, partially under construction.

Chairperson Sigel expressed his concern with the cabin meeting building code requirements. He wondered what Mr. Desch's plans were to bring the cabin up to code

if need be. Mr. Desch referred to the documentation in the packet from the Adirondack Park Agency, which specifically limits the requirements for compliance with New York State Building Code. He stated that the cabin is not considered to be a dwelling unit according to the Adirondack Park Agency technical bulletin.

Attorney Brock asked if the regulations applied only to structures under the jurisdiction of the Adirondack Park Agency. Mr. Desch stated the regulations apply statewide, but Mr. Kanter did not believe that was the case.

Attorney Brock and Mr. Desch continued to discuss whether the regulations applied to structures outside of the Adirondack Park area. Attorney Brock did not think it mattered because the Zoning Board did not interpret State regulations or definitions; the Zoning Board needed to interpret the Town's Zoning Ordinance and determine whether the proposed structure would be considered a dwelling. She stated that the Board should be looking at the definition for dwelling and dwelling unit, finding out what is being proposed and whether it meets that definition.

Mr. Desch stated that the application made clear that the structure was not intended to be a dwelling unit. Attorney Brock asked if people were intending to sleep in the structure and Mr. Desch said that William may upon occasion. Attorney Brock then asked if William would be eating at the structure and Mr. Desch responded that he may be eating outside. They tend to bring their lunch and eat while they're working. The site would not have cooking facilities.

Chairperson Sigel confirmed that there would not be food preparation or sanitation provisions. Board Member Niefer asked if it would be easier to deal with the question if the Board considered the structure a storage facility. He thought the issue was being clouded by calling it a camp.

Mr. Desch stated that was the primary intent and why he made reference to it being a nursery. He called it a land management camp because tools and materials will be kept in the structure.

Chairperson Sigel stated that if the structure was a shed normally associated with a house, then it would not be a permitted use because a shed is only allowed as an accessory use to a house. He noted that there is a permitted principle use of a nursery in the LDR zone. He confirmed that part of the property would be used as a nursery. Chairperson Sigel stated that in that case usual farm buildings would be permitted as part of a nursery as a principle use. Attorney Brock agreed and looked up to definition of nursery. She then asked if anything would be sold from the nursery because the definition of a nursery requires items to be sold. Mr. Desch replied no. Attorney Brock determined that it would not meet the definition of a nursery because trees and shrubs would not be sold in conjunction with being grown, cultivated or stored.

Chairperson Sigel pointed out that the structure would be permitted in conjunction with any lawful farm purpose. Attorney Brock then reviewed and read the definition of a farm

to the Board. Chairperson Sigel noted that there would be fruit trees and a vegetable garden on the property. Board members agreed that the proposed structure would house tools needed in the cultivation of fruit trees and vegetables. Attorney Brock stated that the Board could entertain an interpretation that the property was a farm and then a use variance would not be needed. Chairperson Sigel noted that the building would still need to comply with State Code if the Board made that interpretation.

Mr. Desch asked if a use variance would be granted to allow sleeping at the structure by calling it a farm camp. Chairperson Sigel did not think the appeal met the criteria for a use variance; not getting a variance did not impose a financial hardship to the applicant if the variance was simply to allow sleeping in the structure a few nights per year. Mr. Desch stated that it would be permitted if the Adirondack Park regulations applied. Mr. Kanter was 99% sure that the regulations did not apply outside the jurisdiction of the Adirondack Park.

Attorney Brock reiterated that the Board was only making a determination of what the Town's Zoning Ordinance permits; it does not have jurisdiction to interpret State Code. Mr. Desch thought it was important for the Board to research the applicability and the record with respect to the Adirondack Park Agency. Attorney Brock stated that under State building code sheds were classified as Group U occupancy.

Chairperson Sigel stated that the Town would like to refer to the structure as a shed, which the State building code considered to be Group U occupancy. Mr. Kanter clarified that it was an agricultural shed on a farm.

Chairperson Sigel opened the public hearing at 8:51 p.m. and invited the public to address the Board. Raymond Mayo came before the Board and stated that he managed the South Hill Cemetery, which abuts Mr. Desch's property. He expressed concern regarding the location and size of the shed, and how much water it would shed. Mr. Mayo explained that there have been water problems in the past and wanted to know if it would create a greater watershed.

Chairperson Sigel stated that the shed was less than 150 square feet and Mr. Desch clarified that the shed was located on the southeast side of Updike Road, which was a different drainage area than the parcel abutting the cemetery. Mr. Mayo was satisfied that his questions had been answered and did not have a problem with construction of a shed.

Ghoul Coleman came before the Board and expressed support for the appeal. He felt that there would be a positive residential impact and that the neighborhood would improve as a result of the shed.

Chairperson Sigel closed the public hearing at 8:56 p.m. and asked if there was further discussion or comments. Mr. Kanter pointed out that the shed was located at the top of a stream and that the Town was working on a new stream setback law. The provisions do not apply to the shed at this point, but he wanted the Board to know that the stream

setback law would place restrictions on what landowners can do within designated stream setback areas. He noted that the shed may be located within what may become the designated stream setback area. The steep slopes in the area may also cause the stream setback buffer to be extended. Mr. Kanter added that the shed may require a Simple Stormwater Pollution Prevention Plan.

Mr. Desch asked Mr. Bates and Mr. Kanter to look at the site because he believed the shed complied with the new ordinance. Mr. Bates asked what type of foundation the shed had and what was on the ground before the shed was there. Mr. Desch stated that one tree within the footprint was cut down and two trees next to the footprint were cut down to be used in the construction of the shed. He noted that there was no change in grade and that the foundation was placed on igneous boulders.

Mr. Bates explained that even though the structure was determined to be a shed, it was still subject to provisions of the Code. The Code states that the site is suppose to be properly graded so that water does not run into the foundation etc. He noted that grading may need to be done to keep the water from running under the building and into the footers.

Chairperson Sigel stated that the Board did not need to complete SEQR review for an interpretation. He then moved that the Board determined that the property meets the definition of a farm and therefore the shed is an allowed use based upon the findings that fruit trees and organic vegetables will be grown on the property and the property is larger than 3 acres. Board Member Krantz seconded. Vote—carried unanimously.

Mr. Desch asked if the Board would make reference to Group U occupancy. Attorney Brock stated that it was not in the Board's purview to do that. Chairperson Sigel agreed and stated that the Board did not have the power to determine the occupancy rating of a dwelling. Mr. Desch thought he heard that the occupancy rating of a shed was Group U occupancy. Chairperson Sigel replied that the occupancy rating is stated in the State building code; the Board was treating the structure as a shed for the purposes of making a finding that it was an allowed structure. He added that it was the Code Enforcement Officer that determined if a shed was Group U occupancy.

Chairperson Sigel stated that if the Code Enforcement Officer determined that the shed was not Group U occupancy then Mr. Desch would need to appeal the determination to the State. Attorney Brock added that the Zoning Board's interpretation goes back to the Code Enforcement Office and the Code Enforcement Officers were bound by the interpretation.

Mr. Desch asked that the minutes reflect that since the property was considered a farm shed that the structure meets the building code requirements for Group U occupancy. Chairperson Sigel stated that the Board stated it was their belief that it would be Group U occupancy and reiterated that it wasn't the Board's job to make that determination. Mr. Bates added that the occupancy was Group U under New York State Uniform Fire

and Building Code; however the Town's rules and regulations do not have a provision for determining State regulations.

Mr. Desch thanked the Board.

**Adjournment**

With no further business, Chairperson Sigel adjourned the meeting at 9:10 p.m.

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Kirk Sigel, Chairperson

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Carrie Coates Whitmore,  
First Deputy Town Clerk