

Town of Claverack
Zoning Board of Appeals
Mellenville, NY 12544
Minutes: January 23, 2013
7:30 p.m.

APPROVED 2/27/13

Chairman Frank Clegg called the January 23, 2013 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Chairman Clegg led ZBA members and the audience with the Pledge of Allegiance.

Members in attendance were: Chairman Frank Clegg, Steven Melnyk, Kim Keil, David Graziano, Oliver Milot, Jock Winch, attorney Barrett Mack, engineer Paul McCreary, and Rob Fitzsimmons arrived later in the meeting.

Motion to approve the minutes of November 28, 2012 meeting was made by David Graziano with a second from Steven Melnyk. All members were in favor. Motion carried.

Continuing Applications for 1/23/13:

Dianda, John: Tax Map #(SBL) 121 . – 1 – 60 Located at 3 Rte. 217 Claverack. Area Variance for setbacks of a constructed side porch.

Mr. Dianda did not attend the meeting. Strike one.

Unger, John: Tax Map #(SBL) 141 . – 2 – 09 Located at 304 Miller Rd. Claverack. Interpretation of Use for a Home Occupation for a residence and artist's studio.

Virginia Bennett representing the applicant informed the Board that her client has decided to withdraw his request for an Interpretation for a Home Occupation. Ms. Bennett informed the Board members that the buildings are too large even though the residence is attached to the shop. Ms. Bennett will submit a letter of withdraw for the file.

Unger, John: Tax Map #(SBL) 141 . – 2 – 09 Located at 304 Miller Rd. Claverack. Use Variance for non-conforming use as an artist' studio and residence.

Virginia Bennett was present for the applicant. Ms. Bennett submitted a letter to the Board arguing the criteria for meeting a Use Variance. Barrett Mack informed Ms. Bennett that he would have liked to review the criteria submission prior to the meeting. Mr. Mack requested the applicant submit appraisal reports to substantiate the depreciation value of the property. David Graziano stated that the submission shows that the sale price of the property has decreased over the past several years it does not answer the criteria #1 of financial hardship. Mr. Graziano asked for a profit and loss margin statement. Ms Bennett stated that the financial hardship is actually on the seller to prove not the purchaser. David Graziano continued that from the sellers point of view the buildings were paid off many years ago and he would like the seller to provide a proof of loss statement. Chairman Frank Clegg stated that the owner has paid his taxes for the property and is unable to sell it because of the uniqueness of the buildings. Steven Melnyk stated that the purchaser is buying into a self-created hardship which is uniquely on the seller not the buyer because the seller created the property. Ms. Bennett stated that the uniqueness of the buildings is a detriment to the seller. Ms. Bennett continued that Mr. Unger will not purchase the property unless he can use it for his business of making his fire bowls. Barrett Mack informed Ms. Bennett that the Board will need hard dollars and cents information. Ms. Bennett stated that if Mr. Unger purchases the property and is unable to use it for his business he will realize 0% return because he is not interested in using it for just a residence. Barrett Mack informed the applicant's representatives that the ZBA has required appraisal reports in the past. Ms. Bennett informed the Board that the property has been on the market since 2003 to the present and the price has dropped significantly both with the downfall in the housing market and because of the uniqueness of the property. Chairman Frank Clegg stated that the property is falling into a state of disrepair

because of the amount of time on the market. David Graziano stated that one other issue is the truck traffic on Miller Rd. Mr. Graziano continued that Mr. Unger's application states that tractor trailer trucks will be used for deliveries and pick-ups but a letter from TOC Highway Superintendent Louis LaMont addresses the use of such trucks and the need for curbing, roadway site distance, etc. Ms. Bennett stated that the LaMont letter indicates that a need for curbing at the driveway would be required. Steven Melnyk asked if UPS or FedEx type trucks would be the largest used. Ms. Bennett stated that she does not know who Mr. Unger will contract with but the trucks would be the size of a UPS truck. Ms. Bennett continued that this type of delivery truck is on Miller Rd. each day delivering orders, fuel oil, etc. and that it is unfair to restrict these trucks for only one property. Steven Melnyk asked if the roadway has any weight or truck size limit signs. Ms. Bennett stated that she will contact Mr. LaMont regarding delivery trucks. Ms. Bennett supplied photos of the fire bowls to answer a previous question of the sizes. Ms. Bennett stated that Mr. Unger usually works approximately 50 days a year to make approximately 200 fire bowls so it is not an everyday operation. Chairman Frank Clegg opened the meeting to the public hearing at 8:05 p.m.

Lance Wheeler read letters from the following neighbors in opposition to the proposal:

Lance & Gail Wheeler – 300 Miller Rd.

Stuart Shakshober – 310 Miller Rd.

Regina Aldisert & Terrance Laughlin– 436 Miller Rd.

Dr. Jeffrey & Angela Monkash

Mr. & Mrs. Michael Todd

Elizabeth Davis – 335 Miller Rd.

Daniel Quinion – 491 Miller Rd.

Josh & Jen Weitman – 343 Miller Rd.

Josh Feuer – 323 Miller Rd.

Bill & Donna Barrett – 297 Miller Rd.

Leonard Goldberg & Donna Schneier – 347 Miller Rd.

Mr. & Mrs. Charles North – 301 Miller Rd.

These neighbors are concerned with truck traffic, noise, scrap metal, fire danger, pollution, property values, animals, quality of life, and hours of operation.

Mr. Wheeler informed the Board members that he has contacted a neighbor of Mr. Unger's in Michigan regarding his operation there. Mr. Wheeler stated that the neighbor informed him that Mr. Unger's property in Michigan is a mess. Mr. Wheeler continued that the neighbor stated that Mr. Unger occupies an old gas station and leaves scrap laying all over outside, does not mow the lawn, noise is incredible, works outside many days, works late into the night, and that the fumes from the torches linger for weeks. Not for a residential neighborhood. Mr. Wheeler continued that the neighbor stated that the people here would be foolish to think that Mr. Unger will fix up the property because of the way he keeps his property in Michigan. Steven Melnyk asked Mr. Wheeler for the name of the neighbor in Michigan. Mr. Wheeler declined to divulge the name. Mr. Wheeler also supplied a video of Mr. Unger's operation and property in Michigan for the ZBA members to view. Mr. Wheeler will send the video to the ZBA secretary to distribute. Steven Melnyk asked Mr. Wheeler if he shot the video of Mr. Unger's property in Michigan. Mr. Wheeler answered no. Copies of letters were submitted to the file.

Warren Replansky spoke as representative for Regina Aldisert. Mr. Replansky stated that upon reviewing the application he thought that the project was a good use for a bad place but after reconsideration he does not feel that the applicant is able to meet the criteria for granting a Use Variance. Mr. Replansky stated that the owner of the property has created his own hardship by failing to maintain the upkeep of the property, the application requires substantial real estate and appraisal documentation to validate the financial hardship, Long form SEQRA due to the nature of the business, and wants access to all future submissions to the application.

David Graziano stated that this property received a Use Variance from the TOC ZBA in 2007 for a music studio and Ms. Davis was present at that meeting. Mr. Replansky asked if the ZBA granted a Use Variance. David Graziano stated yes because of a non-conforming use but the sale of the property fell through. Motion to continue public hearing was made by Kim Keil with a second from Steven Melnyk. All members were in favor. Motion carried. Public hearing continued to the February meeting. Applicant's representative was asked to supply requested material prior to the meeting.

New Applications for 1/23/13:

Mottoshiski, Joan: Tax Map #(SBL) 123 . – 2 – 46 Located at 319 Prach Rd. Ext. Caryville. Area Variance for rear yard setbacks of 20-feet for the construction of a new garage which requires a 50-foot setback.

Mrs. Mottoshiski was present for the application. Ms. Mottoshiski informed the Board that she is looking for an Area Variance to construct a garage on her property. Ms. Mottoshiski stated that the back set back is short by a few feet from the hill. Ms. Mottoshiski stated that her property line goes down the bank to the creek. David Graziano asked if Ms. Mottoshiski knew the exact distance from the proposed garage to the property line at the creek and not just to the bank. Ms. Mottoshiski stated that she did not know the exact distance. Jock Winch stated that if the property line goes to the creek and the distance meets the set back then there is no need for an Area Variance. Jock Winch informed Ms. Mottoshiski that the setback distance goes to the property line not to the beginning of the bank. Chairman Clegg instructed Ms. Mottoshiski to check with the Town of Claverack Building Department and to get the exact distance from the property line to the garage because she might meet the setbacks. Rob Fitzsimmons instructed Ms. Mottoshiski to check with her surveyor before going to the TOC building department. Ms. Mottoshiski will let the ZBA secretary know of her findings. Set for public hearing at the February meeting just in case. Ms. Mottoshiski was instructed to obtain a public notice sign from the Town Office before the meeting.

Wright, Samuel & Levy, Zach dba/Shireworks Productions Inc.: Tax Map #(SBL)123 . – 2 – 01 . 120

Located at 2177 County Rte. 11. Request for an Interpretation for Use to host a Big Up Music and Camping Festival.

Paul Freeman was present for the application. Mr. Freeman introduced Jackie Eaton, festival organizer and Sam Wright, property owner. Mr. Freeman informed the Board that he represents Zach Levy owner of Shireworks who has for the past 3 years promoted this festival called The Big Up. Mr. Freeman continued that for the past few years the festival was held at the Sunnyview Farm on County Rte. 9 but due to extenuating circumstances needed to find a new place. Mr. Freeman stated that Sam Wright has offered his property located on County Rte. 11 and Stever's Crossing Rd. Jackie Eaton introduced herself informing the Board that she has over 20 years as a festival promoter and has worked with Shireworks. Ms. Eaton informed the Board that she, the promoter, and Mr. Freeman met with representatives from the Columbia County emergency service agencies and a representative from the Columbia County Department of Health on January 23, 2013 to inform them of the proposed festival to be held over the weekend of August 8th through the 11th. Ms. Eaton informed the Board that their application is seeking an Interpretation of Use from the TOC ZBA as an Agri-Tourism use because of the nature of the festival. Ms. Eaton stated that the festival falls under a definition of an Agri-Tourism event because it benefits agricultural businesses and promotes rural tourism. Ms. Eaton continued that the festival will have farm equipment demonstrations, food-to-table cooking demonstrations, farmers markets, camping, winery demonstrations, and several other outdoor activities centered around families. Ms. Eaton stated that the TOC ZBA Table of Use for a temporary business used for Agri-tourism is an allowed use within the rural conservation area. Rob Fitzsimmons informed the Board that it is they are being asked to determine if this is an Agri-Tourism use or a Recreational Activity Use which would require the applicant to seek a Special Exception from the Planning Board. Chairman Frank Clegg stated that the TOC Zoning Regulations do not cover mass gatherings. Chairman Clegg continued that he has many questions regarding fire, septic, emergency, etc. Mr. Freeman informed the Board that no matter what they determine the application will still need to satisfy public safety and Department of Health requirements. Steven Melnyk stated that in his opinion the festival falls under the TOC Zoning Regulations 2.2.167 as a Recreational Activity and that 2.2.15 which is the Agri-Tourism Use refers to apple picking, winery festival, etc. Mr. Freeman informed the Board that the festival will stimulate growth, expand farming and revenue stream and introduce the community to local agricultural businesses. Chairman Clegg stated that addressing the emergency and DOH issues should require more. Rob Fitzsimmons informed the Board that a Recreational Activity use will require the applicant to have a full Site Plan Review from the Planning Board and public hearing. Steven Melnyk stated that he did see the agricultural aspect of the festival but that section 2.2.167 fits better because of the size and scope of the festival. Rob Fitzsimmons informed the Board that once the applicant is granted approval they will hold the festival on each year on the site and they

would not have to go through another review unless they change some aspect of the festival. Ms. Eaton informed the Board that Agri-Tourism use is loosely defined in order to bring money to an agricultural region through multiple activities and this festival fits directly into that definition. Kim Keil asked the hours of operation of the festival. Ms. Eaton stated that the event will begin on Thursday afternoon and run through Sunday at approximately noon when the campers will be packing up to leave the site.

Rob Fitzsimmons informed the Board that the applicant is advocating for an Agri-Tourism Use so put to a vote to let them go to the next step.

Members voting that the use does not fall under Town of Claverack Zoning Regulations section 2.2.15 as an Agri-Toursim use were Steven Melnyk, Kim Keil, David Graziano, Oliver Milot, Jock Winch, Chairman Frank Clegg. Mr. Freeman informed the Board that he will withdraw this application and apply to the Town of Claverack Planning Board for a Special Exception.

Katy Cashen was present to distribute new ZBA applications for the Board members to review.

Motion to adjourn the January 23, 2013 meeting was made by David Graziano with a second from Kim Keil.

Meeting was adjourned at 9:30 p.m.