

Town of Claverack  
Zoning Board of Appeals  
P.O. Box V  
Mellenville, NY 12544  
Minutes of June 26, 2013  
7:30 p.m.

APPROVED 8/28/13

Acting Chairman Jock Winch called the June 26, 2013 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Acting Chairman Winch led the Board and audience members with reciting the Pledge of Allegiance.

Members in attendance: Jock Winch, Steven Melnyk, Kim Keil, David Graziano, Oliver Milot, attorney Rob Fitzsimmons, engineer Paul McCreary and secretary Jodi Keyser.

Absent with regret: Chairman Frank Clegg and Chris Post

Members reviewed the Minutes of the May 22, 2013 meeting. Motion to approve the minutes of the May 22, 2013 meeting with minor corrections was made by Kim Keil with a second from Steven Melnyk. All members were in favor. Motion carried.

**Continuing Applications for 6/26/13:**

**Finck, Thomas dba Finck Realty Site Plan Review:** Tax Map #(SBL)101 . – 1 – 68 Located at 793 Rte. 66 Hudson, corner of NYS Rte. 66 & NYS Rte. 9-H. Use Variance for to allow for a restaurant in a new multi-use strip mall which is currently under Site Plan Review with the Town of Claverack Planning Board.

Pat Prendergast was present for the application. Mr. Prendergast reviewed the Use Variance application for the Board members reminding them that the previously approved 1998 Site Plan for this property included a restaurant and other retail stores. Mr. Prendergast continued that the recent zoning change changed this property from Highway Commercial which allowed for a restaurant into Commercial Industrial Park which does not allow for a restaurant. Mr. Prendergast informed the Board that once an approval is granted for a building that approval does not time out regardless. Mr. Prendergast then informed the Board that his client based on that information has decided to change his application from a Use Variance to an Interpretation. Steven Melnyk stated that in his opinion a Use Variance is not necessary because a restaurant is an auxiliary use within a strip mall, a grease trap was installed in 1998 specifically for a restaurant, and the applicant should be held harmless to the Zoning change because of the previous approval. Pat Prendergast informed the Board that Mr. Finck's family has owned the property since 1940 and at one time did operate a restaurant from this site. Rob Fitzsimmons informed the Board that the application is set for public hearing and this should proceed. David Graziano stated that after reviewing the minutes regarding the previous approval from 1997 & 1998 he did not see any mention of a restaurant within the strip mall and therefore did not feel that an approval of a restaurant was made in 1998. Mr. Graziano referred to Mr. Melnyk for guidance because Mr. Melnyk was a member of the Zoning Board during this approval. Mr. Melnyk stated that he did remember the applicant mentioning a restaurant at the site and that a restaurant fit within the definition of retail space which was approved. Acting Chairman Jock Winch opened the meeting to the public hearing at 7:38 p.m. Bill First stated that he is encouraged by seeing things like this move forward in the TOC. Acting Chairman Jock Winch stated that he cannot see why this area was changed from HC to CIP. Tom Williams asked the Board what if any other hurdles does the applicant need to jump to be able to begin construction. Pat Prendergast stated that the applicant has a current Site Plan application before the TOC Planning Board and public hearing will be held on July 1, 2013. Charles Vieni stated that in his opinion this project is a great improvement and will stimulate the economy. Mr. Vieni continued that the TOC Economic Development committee is trying to get businesses started with in the TOC to help the local economy grow in Claverack. Mr. Vieni also stated that there are no other restaurants within the TOC. Acting Chairman Jock Winch asked audience member Michael Brandon if he recalled this application in 1998. Mr. Brandon disagreed with the statements from ZBA member Steven Melnyk. Mr. Brandon informed

the Board that he did not remember a strip mall receiving approval only the Mobile mart. Mr. Brandon continued that he remembered the strip mall having issues with the fill and with the impact on Mud Creek. Pat Prendergast informed the Board that the applicant did receive a building permit from Stan Koloski in 1998 but that permit expired because the applicant did not proceed with the building at that time due to the economy. Kim Keil stated that it is the TOC ZBA's place to encourage business. Acting Chairman Jock Winch agreed that there needs to be a good mixture of businesses especially in the North Claverack area. Acting Chairman Winch stated that he felt that it was wrong for the TOC to change the zoning in that area. David Graziano questioned the minutes of the 1998 approval and the grease trap. Pat Prendergast informed the Board that the TOC ZBA approved a retail space in 1998 which was a permitted use and that Stan Koloski issued a building permit for this building. Steven Melnyk stated that the retail space could hold a multitude of different businesses and a restaurant could be considered as retail business. Rob Fitzsimmons stated that the previous approval under the old zoning laws and is now going through the new zoning laws. Rob Fitzsimmons continued that he applicant is currently under a stringent Site Plan Review with the TOC Planning Board. Rob Fitzsimmons continued that the applicant is now seeking an Interpretation from the TOC ZBA due to the fact that a previous building permit was issued for the site by Stan Koloski that expired. Tom Williams stated that this is a unique situation with the applicant investing in the TOC using his own money and not asking for a PILOT or any favors from the Town of Claverack to bring businesses to the area. Acting Chairman Winch agreed that it is good that the applicant is investing his own money not asking for favors from the TOC taxpayers. Acting Chairman Winch closed the public hearing at 7:43 p.m. Paul McCreary stated that a restaurant was an allowed use in the HC zone under the old zoning code and it did have approval in 1998 so that approval should remain in effect at this time.

Motion to grant interpretation that previously approved Site Plan in 1998 allowing for a restaurant use had not expired was made by Steven Melnyk with a second from Kim Keil. All members were in favor. Motion carried. Secretary Jodi Keyser will provide the TOC Planning Board with a determination letter for their information.

### **New Applications:**

#### **Informal:**

**Argus, Joseph:** Seeking information regarding a minor subdivision of 5 acres into two separate parcels. Parcel size does not conform to the current Zoning Code.

Joseph Argus and Steve Argus were present to ask the ZBA for advice regarding a proposed subdivision of their property. Mr. Argus informed the ZBA that he has a parcel consisting of 5.96 acres which he wants to subdivide into two parcels of 3 acres and 2.96 acres respectively located at 795 Rte. 23 in Claverack. Mr. Argus stated that he built his home on the parcel in 1988 and would like to subdivide this property to give his son a parcel to build a home. Rob Fitzsimmons informed the ZBA members that the new zoning code does not allow for subdivisions less than 5 acres in this area. Rob Fitzsimmons continued that the applicant would need to apply for an Area Variance before proceeding to the TOC Planning Board for a Minor Subdivision. Rob Fitzsimmons informed the applicant that they will need to provide proof as the 5 factors that are required to determine the Area Variance. Acting Chairman Winch stated that the larger lot sizes are counterproductive and that the TOC made the zoning changes without consideration to the property owners and the area youth. Paul McCreary stated that it would be helpful if the ZBA had statistics on the number of Area Variances they have granted. David Graziano stated that every situation is unique. Rob Fitzsimmons informed the ZBA that it is fine to give opinion and take each application's uniqueness into consideration but they must be careful because a lot of residents will be watching. Rob Fitzsimmons continued that granting an Area Variance is in all actuality the ZBA giving permission for something that is not allowed and the ZBA should be fair to the applicant and give some sort of indication which way they are inclined to vote before the applicant pays the fees associated with the application. Steven Melnyk stated that this situation is unique because the applicant is going to give the parcel to his son to build a home and not to sell for profit therefore is has not issues with granting an Area Variance. Bill First informed the ZBA that the Comprehensive Plan is a living document and is reviewed every 5 years to make changes. David Graziano stated that the Town of Claverack Zoning Laws are actually up for review every year if changes are needed. Acting Chairman Winch stated that the Zoning Code needs to be able to change and he would be inclined to approve this Area Variance. Rob Fitzsimmons informed the applicant that this is just a straw poll because the ZBA is required to hear from the neighbors. Steven Melnyk asked Mr. Argus if he thought that any of his

neighbors would have a problem with this subdivision. Mr. Argus stated that he might have a problem with the neighbor on the hill. Mr. Argus stated that he just wants to subdivide the property to keep his son in the area. Informal Straw Poll: Kim Keil needed more information and neighbor concerns, Oliver Milot can't give 100% but seems like a good idea, David Graziano stated that he also needs more information and to hear from the neighbors. Mr. Argus will apply with Stan Koloski and submit a formal application.

Motion to adjourn the meeting was made by Oliver Milot with a second from David Graziano. All members were in favor. Motion carried. Meeting adjourned at 8:12 p.m.

Respectfully submitted,  
Jodi Keyser, Secretary