

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544
Minutes of May 22, 2013

Approved 6/26/13

Chairman Frank Clegg called the May 22, 2013 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Chairman Clegg led the Board and audience with the Pledge of Allegiance.

Members in attendance were: Chairman Frank Clegg, Kim Keil, David Graziano, Chris Post, Oliver Milot, Jock Winch, attorney Barrett Mack, engineer Paul McCreary, and secretary Jodi Keyser

Absent with regrets: Steven Melnyk

Motion to approve the Minutes of the April 24, 2013 meeting was made by Kim Keil with a second from Jock Winch. All members were in favor. Motion carried.

Continuing Applications for 5/22/13:

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 appear for the meeting. 3rd strike.

Motion to deem the application abandon and to send it back to the Town of Claverack Building Department was made by Kim Keil with a second from Jock Winch. All members were in favor. Motion carried.

New Applications for 5/22/13:

Columbia Greene Humane Society Interpretation of Use: Tax Map #(SBL) 100 . – 1 – 03 Located on Humane Society Rd. Interpretation of a previously approved Site Plan Review. Pat Prendergast, Dave Robinson, and Ron Perez were present for the application. Mr. Robinson explained that the applicant had applied for an Interpretation of Use in 2011 and was granted the use as a Veterinary Clinic and then they came for a full Site Plan Review and Special Exception which was also approved in 2012. Mr. Robinson continued that the site is already being prepped for the building and Meltz Contracting is doing the work. Mr. Robinson continued that they have been finalizing plans with the architect and when they were finished they applied for a Building Permit which was denied because the Special Exception had expired. Mr. Robinson informed the Board that the Columbia Greene Humane Society representatives are confused because this project was granted under the previous Zoning laws and they don't understand why they are here now. Barrett Mack informed the applicant that Stan Koloski is seeking clarification via Interpretation from the ZBA whether they will uphold the previous Site Plan/Special Exception Use approval or require another review and public hearing. Barrett Mack continued that the applicant had let the Special Exception lapse. Mr. Robinson stated that with all due respect he

had not let anything lapse but rather they were misinformed and unaware that this approval would time out. Mr. Robinson stated that he did apply for a building permit. Jock Winch informed the applicant that the ZBA no longer reviews Site Plans. Barrett Mack informed the Board that they can proceed under the old law and treat as an Interpretation but the ZBA will still have to hold a public hearing or they can treat as a new application. As per page 53 section 13.2.7 as per the old code. Barrett Mack continued that the section also says that extensions can be granted.

Motion to determine that the previously approved Interpretation, Site Plan, and Special Exception are valid and to make administrative clarification and grant an extension of such for 180 days beginning May 23, 2013 upon good cause shown by the applicant was made by David Graziano with a second from Oliver Milot. All members were in favor. Motion carried

Claverack Corners LLC Interpretation of Use: Tax Map #(SBL) 121 . 03 – 3 – 16 Located at the intersection of NYS Rtes. 9-H and 23 in Claverack. Interpretation of a previously approved Site Plan Review.

Pat Prendergast, Vincent Concra, and Margaret Concra were present for the application. Mr. Prendergast explained to the Board that his client has recently purchased the former Claverack Corners LLC property at the intersection of NYS Rte. 23 & 9-H. Mr. Prendergast explained that the site was granted a previous Special Exception and Site Plan Review in 2010 by the former owner to have a pizza restaurant. Mr. Prendergast continued that the former owner had Gaylord Contracting install a CC DOH approved septic system and had received NYS DOT curb cuts. Mr. Prendergast stated that the agreement between the previous owner and the people that were planning to run the business fell through because of the cost to install the DOT curb cuts. Mr. Concra recently purchased the property and would like to have a take-out sandwich Subway/Carvel shop at the site. Mr. Prendergast explained that the Special Exception and Site Plan Review were approved under the old TOC Zoning Codes and now the new TOC Zoning Codes 17.8.1 allows this use. Mr. Prendergast informed the Board that he approached the TOC CEO for a building permit but Stan Koloski was unsure and advised the applicant to apply for an Interpretation. Jock Winch asked if the applicant is renting the building out or will he run the business and there are a number of uses on the single parcel. Jock Winch continued that the existing parcel holds two separate buildings one with a business offices and rental apartments above and the other building was a former gas station. Pat Prendergast stated that he thinks that multiple uses are now allowed under the new TOC Zoning Laws. Jock Winch suggested a possible subdivision of the parcel. Chairman Frank Clegg suggested finding out how many uses are allowed on one parcel. Jock Winch stated that it is a good move but would want to do correctly according to the TOC Zoning laws. Chairman Frank Clegg informed the applicant that they would need to apply to the CC DOH for a food permit. Mr. Prendergast stated that the applicant will apply to the CC DOH and they are just asking for the TOC ZBA to issue a letter to Stan Koloski regarding the previously approved Special Exception and Site Plan for the property. Barrett Mack informed the Board that after reviewing the new TOC Zoning Laws he is unable to find a limit to the number of uses per site. Mr. Concra informed the Board that he plans to make improvements to the property that will look great and the TOC will appreciate. Barrett Mack informed the Board that they can grant a grandfather clause with the new TOC Zoning Laws if they feel it would be a good idea. Mr. Concra informed the Board that the property has TOC water and a new CC DOH approved septic. Barrett Mack informed the Board that an Interpretation requires a public hearing unless they determine that the previously approved Site

Plan and Special Exception are valid. Barrett Mack informed the Board that it is within their jurisdiction to rule that the previously approved Site Plan did not time out and is still valid for this property and this use. Motion for the Town of Claverack Zoning Board of Appeals considers the previously approved Site Plan approval together with conditions remains in full force and has not timed out as per Town of Claverack Zoning Law Section 17.8.1 was made by Kim Keil with a second from Jock Winch. All members were in favor. Motion carried.

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.

Thomas Finck and Pat Prendergast were present for the application. Mr. Prendergast informed the Board that his client is applying for a Use Variance for a restaurant for a building that is currently under a Site Plan Review with the TOC Planning Board at the intersection of NYS Rte. 9-H & 66. Mr. Prendergast explained that Mr. Finck has obtained a Site Plan approval for this building in 1998 but due to the economy at the time he did not go forward with the construction. Mr. Prendergast continued that his client is now seeking to construct a new building at the site that will be approximately 6,000 square feet. Mr. Prendergast informed the Board that the new TOC Zoning Laws changed the parcel from Highway Commercial to Commercial/Industrial Complex. Mr. Prendergast continued that under the old Zoning Laws a restaurant was a permitted use within the Highway Commercial Zone but is no longer a permitted use in the Commercial/Industrial Complex Zone. Mr. Prendergast continued that he thinks that the TOC made a mistake with this change. Mr. Prendergast stated that he found out about this change during the Site Plan Review before the TOC Planning Board and that his client was totally unaware of the proposed change with his property. Mr. Prendergast stated that Mr. Finck was surprised by this change and that the TOC possibly made a mistake and would consider changing it back because they would not want a cement plant or major industrial plant at the site. ZBA member Chris Post, who was also on the Zoning Revision committee explained to the applicant that the area was changed to keep it from becoming another Fairview Ave. like in Greenport. Mr. Post continued that the TOC Zoning Revision committee felt that it was important to limit retail businesses but to encourage industries like Ginsberg's, Atmost Refrigeration, and Claverack Pump Service which would bring in more money. Pat Prendergast argued that these types of businesses do not need the road frontage that is needed for retail businesses such as a restaurant. Barrett Mack informed the applicant that they will need a Use Variance which is the hardest variance to obtain because it is up to the applicant to make an argument for the criteria that the ZBA must review. Chairman Frank Clegg informed the applicant that this is a problem because it is the most difficult Variance to get approval for because of the criteria. Pat Prendergast informed the Board that the applicant has owned the parcel since 1946 and had always thought that the site would be a perfect spot for a restaurant. Mr. Prendergast continued that the 1998 Site Plan approval included a grease trap for the septic system for future restaurant. Mr. Prendergast informed the Board that he feels that his client can make the argument that the 1998 approval did not expire and therefore a restaurant was approved as a use with this site plan. David Graziano asked out of curiosity if Mr. Fink had a member of the TOC Town Board advise him to wait for the Site Plan until after January 2013 to apply until the new Zoning Laws were approved? Mr. Graziano continued that he remembered this application being on the agenda for the November 2012 TOC ZBA meeting. Mr. Fink answered yes. Barrett Mack informed the ZBA that it is up to

the applicant to answer the criteria of the Use Variance. Paul McCreary questioned that if the applicant had a previously approved Site Plan in 1998 and now the building is smaller in size and the original approved Site Plan included a restaurant wouldn't this be included now as part of the approval. Jock Winch stated possibly but the previous Site Plan would need to clearly indicate that a restaurant was part of the approval. Barrett Mack suggested that the ZBA Secretary would look for the minutes for the previously approved 1998 Site Plan to see if there a restaurant was part of the approval for this building. Barrett Mack continued that a public hearing should be set and the applicant will need to provide the argument for the Use Variance criteria. Pat Prendergast asked how the TOC could change the zone for property without notifying the owners. Mr. Prendergast explained that his client is a busy man who would not have time to read the newspapers to find out that this was happening. Chris Post informed the applicant that the TOC Rezoning Committee had met over a period of 5 years discussing re-zoning for the town. Mr. Post continued that numerous meetings were held and publicized in the Register Star, on the TOC website, and public comment for the proposed change was held for over 100 days before the change was voted on in December 2012. Barrett Mack informed the Board that the application will be set up for public hearing at the June meeting and they will need to gather the information to argue the criteria of a Use Variance and his office will review the minutes from the previously approved 1998 Site Plan. Barrett Mack informed the applicant that a recent applicant was denied a Use Variance because they did not submit hard dollars and cents proof to the TOC ZBA.

Motion to adjourn the meeting was made by Kim Keil with a second from David Graziano. All members were in favor. Motion carried. Meeting adjourned at 8:25 p.m.

Respectfully submitted,
Jodi Keyser, Secretary