

Town of Claverack  
Zoning Board of Appeals  
P.O. Box V  
Mellenville, NY 12544  
Minutes: August 27, 2014

APPROVED 9/24/14

Chairman Frank Clegg called the August 27, 2014 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Members in attendance were: Chairman Frank Clegg, David Graziano, John Porto, Kim Keil, Oliver Milot, engineer Paul McCreary, attorney Rob Fitzsimmons and secretary Jodi Keyser.

Absent: Chris Post & Steven Melnyk

Correspondence: none

Board members reviewed the minutes of the July 23, 2014 meeting.

Motion to approve the July 23, 2014 minutes was made by David Graziano with a second from Kim Keil. All members were in favor. Motion carried.

**CONTINUING APPLICATIONS FOR 8/27/14:**

**David Cole Use Variance:** Tax Map #(SBL) 141 . - 2 - 9 Located at 304 Miller Rd. (former Jonas Studio) Use Variance for sculpture studio/high-end custom framing business in accessory structure. David Cole and Jennifer Kahrs were present for the application. Mr. Cole reviewed his application for the Board to purchase and use the former Jonas Studio property on Miller Rd. as a sculpture studio and custom frame making studio. Mr. Cole explained that his fiancé, Jennifer Kahrs makes custom frames for museums and art studios by order and he is a sculptor using industrial textile materials that he knits into his sculptures. Mr. Cole informed the Board that he expects to complete 5 – 10 sculptures per year and Ms. Kahrs expects to complete 5 – 15 frames per week at the studio. Mr. Cole informed the Board that he is aware of a previous applicant's issues with vehicle traffic on the road but he assured the Board that he will only use his personal vehicle for transporting the products except for an occasional small u-haul vehicle for pick up and deliveries about 2 times a year. Chairman Clegg asked about noise levels. Mr. Cole stated that noise will not be an issue because his work does not require loud machinery. Chairman Clegg asked if there are fumes from materials and chemicals. Mr. Cole informed the Board that he uses only non-toxic materials mainly glue that have no to little odor.

Chairman Clegg opened the meeting to public hearing at 7:36 p.m.

Lance Wheeler neighbor to the property stated that Mr. Cole has been forthright and willing to answer questions when asked. Mr. Wheeler informed the Board that it is the consensus of the neighborhood that Mr. Cole's studio would be a good fit for the property.

Gretchen Stearns stated that the application seems similar and a continuation of the Jonas studio use in some way. No further comments. Chairman Clegg closed the public hearing at 7:38 p.m.

Rob Fitzsimmons reminded the Board that at the July meeting Mr. Cole was asked to submit hard financial evidence of trying to sell the property with justification and the submitted material is sufficient. Paul McCreary reviews the SEQRA for the Board.

Motion to issue a Negative Declaration with regard to SEQRA was made by Dave Graziano with a second from Kim Keil. All members were in favor. Motion carried.

Motion to approve the Use Variance for a non-nuisance textile sculpture and custom frame making studio in an accessory structure with hours of operation of 9:00 a.m. to 7:00 p.m. Mondays through Fridays and occasionally ½ days on Sunday, vehicle traffic limited to personal vehicle except for 1 – 2 times per year of a small U-Haul type vehicle for transport of sculptures, and public sales by invitation only was made by David Graziano with a second from Kim Keil. All members were in favor. Motion carried.

Mr. Cole paid mailing fees in cash of \$4.41.

*Rob Fitzsimmons left the meeting due to conflict with the Ginsberg Foods application. Attorney Joseph Castiglione entered the meeting as counsel for the Town of Claverack. Jeff Baker is out of town.*

**Ginsberg Industrial Food/G's Best Building Height Area Variance & Setback Variance:** Tax Map #(SBL) 101 . 00 – 02 – 03 . 2 Located at NYS Rte. 66. Area Variance Interpretation for front yard setbacks of a parcel consisting of 2 separate tax parcels in 2 different municipalities whereas the two parcels cannot legally be combined and Variance for building height for structure and/or rooftop mechanical equipment.

Brandee Nelson, John Brusie, Ken Malcom, Lois Kelly and David Ginsberg were present for the application. Ms. Nelson reviewed for the Board that the Ginsberg's Foods Inc. is seeking an area variance for front yard setbacks and area variance for building height. Ms. Nelson explained that Ginsberg's Foods is currently under joint Planning Board Site Plan Review with the Towns of Ghent and Claverack for the construction of a new 300,000 +/- building along NYS Rte. 66 in the Towns of Ghent and Claverack. Ms. Nelson continued that the Town of Ghent was designated as the Lead Agency and in June of 2014 the Town of Ghent and Town of Claverack Planning Boards issued a negative declaration for SEQRA. Ms. Nelson informed the Board that Phase I of the project consists of a 65,000 square foot freezer building and an 8,400 square foot maintenance building. Ms. Nelson informed the Board that the 65,000 square foot freezer building is 50 feet high and the Town of Claverack's zoning code allows for a height of 35 feet so an Area Variance of 15 feet and because the building is built directly on the Town line dividing Ghent and Claverack it is impossible to have a front yard setback with the town line dissecting the building so an Area Variance is needed. Ms. Nelson stated that her clients are asking for an Area Variance of 0 feet for front yard setbacks and an Area Variance for height of 50 feet for the building for the Full Build Out.

Chairman Frank Clegg asked if the driveway for the building is in the front. Ms. Nelson stated yes the entrance is across from Sherman Potts Blvd. and is 350 feet back to the building. Ms. Nelson continued that they have a NYS DOT approved driveway. Chairman Clegg asked why the building needs to be 50 feet high. Ms. Nelson explained that it is more efficient to stack products vertically rather than horizontally and if the building height is kept at 35 feet the freezer will lose a great deal of storage space. David Graziano asked if the building is always maxed with storage. John Bruise informed the Board that pick spots are located on the first level and the remainder of the storage will be fully stocked. David Graziano then asked if the building will be full front to back. Mr. Bruise stated yes except for the first level. Chairman Frank Clegg asked how big the building would need to be if the height was 35 feet. Brandee Nelson answered that if the building were to have a height of 35 feet and keep the same square footage of storage the footprint of the building would not fit within the 33 acre parcel that is the reason for the stacked storage. John Bruise explained that the actual height of the building would be 48 feet but when you add in the mechanicals on the roof it add up to 50 feet. Ms. Nelson referred to an architectural photo of the proposed building and exhibited the 35 foot level and the 50 foot level for the Board. John Porto asked how high the mechanics would be on the roof. Brandee Nelson explained that the height of the building is 44 feet 6 inches with mechanics of 5 feet 6 inches that is why they have asked for the 50 foot height variance. Chairman Clegg asked how deep the excavation will be at the site. Brandee Nelson stated that the site changes elevation over the 33 acre parcel but will be excavated to 220 feet above sea level at the highest point. Chairman Clegg asked if they are excavating so far down won't they have a water problem. Ms. Nelson stated that they have they don't expect to have a water problem. David Graziano asked if they change to a just in time inventory system would they be able to reduce their stock. John Bruise stated that the handling costs would be more because they buy in volume for better pricing. Chairman Clegg opened the public hearing at 8:03 p.m.

Tom Runyon stated that the project is taking place in two towns and the setbacks of the building run under the building. Joe Castiglione informed Mr. Runyon that is correct each town is using their own town zoning laws concerning the Commercial Industrial Park which only allows for certain types of uses and the Town of Claverack Zoning Board of Appeals is reviewing the application for Ginsberg Foods for an Area Variance for setbacks because the town line runs directly through the middle of the building and an Area Variance to allow for the height of the building to be 50 feet. Mr. Castiglione

continued that the Town of Ghent was the lead agency as far as the Site Plan Review. Mr. Runyon then stated that it matters what the use is called and what type of structure the TOC ZBA is granting a variance for, Joe Castiglione stated that the application is for Area Variances for height and setbacks and the application is clear what the building will be used for. Mr. Runyon then stated that the Town of Claverack map of the project shows the town line with the office and wholesale portion of the building in the Town of Ghent and the warehouse portion with maintenance building are in the Town of Claverack. Chairman Clegg informed Mr. Runyon that the Town of Claverack Zoning Board of Appeals is reviewing the Area Variances for the height of the building and the setbacks. Mr. Runyon asked again what type of building would the Board be granting the variances for. Chairman Clegg stated that the Site Plan is up to the Town of Claverack and Town of Ghent Planning Boards to decide. Brandee Nelson stated that the application is for the construction of a wholesale building with a salesroom which the Town of Claverack allows. Joe Castiglione stated that the application is reviewed as a whole and not parsed out. Ms. Nelson stated that she spent several hours with the Town of Claverack Building Department to make sure that the application was correct before submitting to the ZBA. Mr. Runyon stated wholesale with a salesroom. Mr. Castiglione informed Mr. Runyon that the code issue would be with the Planning Board and not for the Zoning Board of Appeals to decide and the TOC Building Department has told the ZBA that the use is allowed as per codes.

Gretchen Stearns stated that the minutes of the last meeting mention the FAA letter and what would this mean for the height of the building. Brandee Nelson stated that the FAA cleared the 269 foot ceiling but required a single red steady burn warning light in the most northwesterly corner of the building for Phase I then moved as the project progresses.

David Bayone stated that the TOC ZBA is only entertaining variances and that this was not done in a vacuum because much time has been spent studying and planning for this property which has been vacant for 20 years. Mr. Bayone continued that this project is being targeted as an economic benefit to the county but he has heard from sources that in the not too distant future the applicant will be seeking a PILOT and the Ichabod Crane and Taconic Hills school districts will be on the losing end with the 'economic benefit only going to the applicant. Mr. Bayone continued that it is common sense that the higher the mechanical systems are placed the louder and farther the noise will travel. Mr. Bayone continued that the mechanicals on the ground level might not be as efficient but the applicant should have come up with another plan. Mr. Bayone finished by stating that the building will look like the big box structures along the New Jersey Turnpike and it does not belong in this area.

Town of Claverack Councilman, Bill Gerlach spoke to the Board as a private citizen stating that Ginsberg's have run a family business for 100 years down the road on Rte. 66 and have been good neighbors offering good jobs with good pay and they are now relocating in the Commerce Park on property that was set aside for just this type of use.

Ken Dow informed the Board that he is an attorney hired by a group of neighbors opposed to the project. Mr. Dow stated that there is a substantiality issue with the height variance because when you add 15 feet to the allowed height of 35 feet over the size of this building then the variance becomes substantial because of the massive volume and is a 42% increase and it will impact the neighborhood and the building is vastly larger than any other building in the Commerce Park. Mr. Dow continued that the Town of Claverack ZBA should only allow the minimum variance and not necessarily what the applicant wants.

Richard Harrison informed the Board that he lives 300 feet to the rear of the building and he has called Whitter, the Doctor's office, and other commercial properties in the Commerce Park and they were told that they could only be one story buildings. Mr. Harrison asked why others were held to the codes and only allowed to have one story and this will be allowed more stories. Mr. Harrison continued that he has nothing against the Ginsberg Foods business but he is against the expansion in the residential neighborhood because the noise and lighting will have a huge impact on the residences surrounding the building. Mr. Harrison stated that truck traffic 24 hours a day 7 days a week is a substantial impact. Ron Cardis who lives on Gahbauer Road stated that he is concerned with the setback issue. Mr. Cardis continued that what Mr. Runyon was trying to say was that the application states that the building will be a warehouse and the purpose is a warehouse and the Town of Claverack Zoning Code does not allow for retail sales, truck terminal or transfer station within the Commerce Park. Mr. Cardis

continued that he has heard a rumor that the use of the building was not fully divulged with the Town of Claverack Building Department and why this is not being re-addressed by the Town of Claverack Planning Board for the misrepresentation. Mr. Cardis continued that the volume of material that will be removed during the development will be substantial and sent to an unknown spot. Mr. Cardis explained that the amount of material that is proposed to be removed will take a great deal of time and the applicant has set an overly aggressive schedule for this to be accomplished. Mr. Cardis informed the Board that by his calculations this will not be able to be accomplished because they have not figured in breakdowns, holidays, and they have not figured the amount of traffic increase will be seen on Rte. 66 during this process. Mr. Cardis informed the Board that the client needs the extra height for the building because the size of the parcel does not allow for a building of this type. Mr. Cardis agreed with Mr. Gerlach that Ginsberg Foods is a successful company but wants should not come before needs. Mr. Cardis continued that this project does not fit the character of the neighborhood or the Commerce Park and the Town of Claverack Zoning Board should not grant variances on wants, this is not a light industrial use, is not practical and urged the Board to uphold the height limit of 35 feet. Chairman Clegg closed the public hearing at 8:38 p.m.

Mr. Malcom addressed the public comments by stating that they have calculated the substantiality of the project and looked at the entire site for screening to maintain the community character, and that the project is within the commercial zone within the industrial park and is consistent with the character and the comprehensive plan. Mr. Malcom continued that the variance for the height of the building is the least necessary for the operation to function. Mr. Malcom stated that the discussion of the excavation is not relevant to the Town of Claverack Zoning Board of Appeals review for the Variances. Mr. Runyon stated that the size of the project does not conform to light industrial use with 180 diesel engines starting between 4:00 am and 7:00 am and this is directly adjacent to a residential neighborhood. Mr. Cardis stated that he took exception to Mr. Malcom's comments that the excavation issue is not part of the review and that the height will not impact the character of the neighborhood and the Town of Claverack and the Town of Claverack needs to review these self-imposed problems that the applicant has created with the proposed building.

Joe Castiglione informed the Board that it is within their jurisdiction to continue the public hearings and allow for written comments, take more time to review the application, or vote on the draft resolution if they feel they have received adequate information. Joe Castiglione summarized the height variance and the setback variance for the Board and read the criteria for a variance. Chairman Clegg stated that the height of the building was not the problem the size of the building in general was the issue most people opposed. Kim Keil stated that she had no problem with the project and agreed with the height variance. David Graziano stated that the Board usually grants the least variance needed and a 43% deviation from the allowed height is a significant variance. Joe Castiglione reviewed the Draft Resolution for the Board. Motion to approve the Resolution to grant Area Variance for front yard setbacks of 0 feet and Area Variance allowing for the height of the building to be 50 feet was made by Oliver Milot with a second from Kim Keil. All members were in favor. Motion carried. Fees for the abutter mailing were paid by Brandee Nelson.

Motion to adjourn the meeting was made by David Graziano with a second from John Porto. All members were in favor. Motion carried, meeting adjourned at 9:07 p.m.

Respectfully submitted,  
Jodi Keyser, Secretary