

Town of Claverack  
Zoning Board of Appeals  
P.O. Box V  
Mellenville, NY 12544  
Minutes for March 25, 2009

**Approved April 22, 2009**

Chairman Frank Clegg called the March 25, 2009 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

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

Members in attendance were: Chairman Frank Clegg, Steven Melnyk, Norma Barnard, David Graziano, Oliver Milot, Paul Gundrum, Jock Winch, Town Attorney; Rob Fitzsimmons, Town Engineer; Joe Romano, and Secretary Jodi Keyser

Correspondence was received from Halfmoon LLC announcing a Smart Growth seminar for Zoning Board members to be held April 23, 2009 in Albany, NY. Members were each given a copy of the brochure.

Board members reviewed the minutes of February 25, 2008 meeting. Motion to approve the minutes for 2/25/09 meeting was made by Norma Barnard with a second from Jock Winch. All members were in favor. Motion carried.

**Continuing Board cases for 3/25/09:**

**Almstead Nursery Company, Inc.:** Tax Map #(SBL) 101 – 2 – 53 Located at 905

Route 66 in the Columbia County Commerce Park. Site Plan Review for the expansion/modification of on-site processing of natural wood mulch.

Mr. William Spampinato, Mike Sullivan, Mr. Almstead, and Mr. Domingo were present for Almstead. New maps were submitted with a revised Long Form EAF. Maps were modified to address the four concerns that were brought up at the February ZBA meeting. New maps show a windrow of plantings is now an access road. Modified the on-site fuel storage tank because of the safety concern with travel of the fuel tank across Rte 66. Applicant preferred on-site tank that meets Town of Claverack building code. The 500-gallon fuel tank was set into a 732-gallon concrete containment structure, which was installed within the required setbacks. Lighting for the flag was removed and replaced with two small up-lights installed onto the flagpole to illuminate the American Flag at night. Small shed on site was moved to meet the required setbacks. Also Mr. Spampinato informed the ZBA members that the applicant is in the process of installing concrete filled steel pipes around the fuel tank for buffers to protect the tank from being hit by a vehicle. Mr. Spampinato informed the Board that these safety buffers will be completed with in the next few days and Dennis Callahan will coordinate with the applicant to inspect the buffers. Chairman Clegg asked the ZBA members if there were any questions for the applicant. Jock Winch addressed the applicant commenting that he is happy to see the wonderful job that they are doing at the site. Great to see that the applicant addressed all of the issues raised by the ZBA. Chairman Clegg opened the meeting to public comment at 7:40 p.m. No public comments. Closed the public comments at 7:40 p.m. Rob Fitzsimmons reviewed the Long Form EAF for the ZBA members for significant environmental impacts. Rob Fitzsimmons reminded the ZBA that the previous SEQRA was approved by this Board for the temporary use and now the applicant is looking for permanent status at the site. David Graziano addressed the question of area that is mentioned on the SEQRA form. SEQRA was changed on page 3 item #2 to show the total amount of property as 9.1 acres.

David Graziano made motion for negative declaration with regard to the SEQRA with a second from Jock Winch. All members were in favor. Motion carried. Motion to approve permanent Special Use Variance was made by Jock Winch with a second from David Graziano. All members were in favor. Motion carried.

**McNamee, James M. Claverack Bank:** Intersection of County Rte 27 & Rte 9-H Claverack, Tax Map # (SBL) 131 . – 1 – 45 . 120 and 131 . – 1 – 45 . 112 seeking Special Exception and Use Permit to operate a sand and gravel bank.

James McNamee and Paul Griggs were present. Mr. Griggs informed the Board that he submitted plans to Joe Romano that afternoon. Joe Romano reviewed the plans and had some minor comments that Mr. Griggs

addressed briefly for the ZBA. Mr. Griggs informed the Board that a diversion ditch will run around the perimeter of the mining operation to divert the runoff into a level spreader area and energy dissipater. Mr. Griggs will work with Joe Romano regarding the berm heights. Joe Romano informed the Board that the new plans address his previous comments. Rob Fitzsimmons reminded the Board that the applicant is awaiting NYSDEC permit approval and SEQRA determination from DEC also. Mr. Griggs informed the Board that as of yet the applicant has not yet received a permit from NYSDEC but they did receive notification of complete application from NYSDEC. Rob Fitzsimmons reminded the Board and audience that NYSDEC governs all mining operations and applications with the Town of Claverack governing portions of the operation i.e. hours of operation, dust mitigation, town road use, copies of all documentation to and from NYSDEC, and applicant will address comments from Town of Claverack engineers Clough Harbour and Associates. Chairman Frank Clegg reopened the public comment at 7:55 p.m. Jenny Post of Rte 9-H asked if the applicant had set Saturday hours of operation. Mr. Griggs stated that the Saturday hours of operation will be set at 8:00 a.m. to 2:00 p.m. Jenny Post asked if the site would be lit. Mr. Griggs stated that there would be no lights at the site. Jenny Post asked if a sign would be installed. Mr. Griggs stated that the site would not have a sign. Rob Fitzsimmons reminded the audience and Board members if the applicant wishes to install lighting and or a sign then the application will need to be revisited by the Town of Claverack Zoning Board of Appeals for approval. Jenny Post then asked if the issue of noise was addressed. Mr. Griggs stated that the applicant had noise studies performed at the site. Also Mr. Griggs stated that the mining operation would be starting at the back of the operation which is the farthest point from residential property and work toward the front of the mine. Chairman Frank Clegg continued the public comment until NYSDEC permit approval and SEQRA designation is received. Rob Fitzsimmons informed the applicant that the Town of Claverack Zoning Board of Appeals could not grant conditional approval because NYSDEC is the lead agency. Rob Fitzsimmons requested that the ZBA Secretary send a copy of the complete file to the Columbia County Planning Board for review. Jenny Post asked how long after the NYSDEC permit is granted will the mine be operational. Mr. Griggs responded as soon as possible. Rob Fitzsimmons informed the applicant that the next Columbia County Planning Department meeting will be held on April 21, 2009 and the next TOC ZBA meeting is April 22, 2009. Continued to April 22, 2009.

### **New Applications:**

**Stringham, Varick:** Tax Map # (SBL) 120 . 2 – 1 – 4 and 120 . 2 – 1 – 10 Located at 406 Rte. 23-B Interpretation of Use.

Mr. Stringham and his attorney James Kleinbaum were present for the application. Mr. Kleinbaum asked that the ZBA Secretary revise the February ZBA meeting minutes to show that Judge Michael Brandon modified his judgement to allow the applicant to present argument to the Town of Claverack ZBA why the applicant should not need to apply for a Site Plan because the use is the same as the previous use for the site. So noted.

Rob Fitzsimmons reviewed the application for the Board members. Rob Fitzsimmons reminded the Board members that the applicant owns the building and is currently renting space to Fusion Motorcycles to repair motorcycles. Rob Fitzsimmons continues that the Town of Claverack Building Department received notice that grading and other things were being done on the site. After inspection the TOC Building Department noticed the applicant that he should have applied for a Site Plan Review for the site for a new use of an abandoned property. Dennis Callahan of the TOC Building Department was present for the meeting and to inform the ZBA the issues of his department. Mr. Kleinbaum informed the Board members that his client's use of the building is not grandfathered but rather is a permitted use within the Highway Commercial Zone.

Rob Fitzsimmons informed the Board and applicant that the building lies within the Highway Commercial Zone and the Rural Residential Zone and this use is not allowed within the Rural Residential Zone. Mr. Kleinbaum stated that on 3/19/93 the TOC ZBA granted a Use Variance to Mr. Karp to replace the Truck terminal with a repair shop. Mr. Kleinbaum continued that he can not understand why the previous and now current owner needed a Use Variance for a permitted use in the Highway Commercial Zone. Dennis Callahan responded the reason is because the building is within the Highway Commercial and Rural Residential Zones and the use is not permitted in the RR zone which is why the Use Variance is required. Mr. Kleinbaum and Mr. Stringham argued that the TOC Zoning line dividing the building into two different zones is illegal within New York State. Rob Fitzsimmons informed the applicant that the previous owner of the site was required to obtain a Use

Variance because the use changed from a truck terminal to a repair shop and was also aware of the fact that the building was located two different zones. Rob Fitzsimmons stated that the site is owned by Mr. Stringham and occupied by Fusion Motorcycles. Mr. Kleinbaum and Mr. Stringham then informed the Board that the site is no longer occupied by Fusion Motorcycles but is now being rented by COARC to repair their fleet of vehicles. Steven Melnyk asked the applicant which portion of the building is COARC renting. Mr. Stringham informed the Board that COARC is occupying 2/3 of the building including the back portion. Norma Barnard asked what COARC is repairing. Mr. Stringham answered that COARC uses the site to repair vehicles that they own. Rob Fitzsimmons stated that as per § 6.1.1.4 of the TOC Zoning Law Site Plan is not required within the Highway Commercial Zone but TOC Zoning Law § 14.18.2 states that Site Plan approval is required upon changes of use. TOC Building Department Code Enforcement Officer Dennis Callahan informed the applicant and Board that his office has researched the property. Mr. Callahan stated that his findings show that the use of the site as a truck terminal/repair shop was abandoned and the property was cited several times by the TOC. Mr. Callahan continued that to his knowledge the TOC ZBA never granted approval to use the rear of the property for any type of repair shop. Mr. Callahan did state that in 1993 the TOC ZBA approved a repair shop on the property, which had conditions of limited areas of the site that could be used for the repair shop and that the repair only the owners vehicles or owners vehicles awaiting repair were allowed on the site. Mr. Kleinbaum stated that the condition could not mean that the owner could only repair his own vehicles. Mr. Callahan produced a map showing the approved area of operation that was granted. Rob Fitzsimmons asked Mr. Kleinbaum if he could address the issue of abandonment of use of the site. Mr. Kleinbaum stated that just because the site did not physically have repair ongoing that does not mean the use was abandoned. Jock Winch stated that he was speaking to Judge Brandon regarding this matter and that Judge Brandon stated that if the applicant did not apply for a Site Plan Review and approval from the TOC ZBA then he would enact the fines. Rob Fitzsimmons clarified for the Board and applicant that the condition of trucking and truck repair was to allow the owner to make necessary repairs on his fleet of trucks at the site. Rob Fitzsimmons then informed the ZBA members that it is up to their discretion to require the applicant to apply for a Site Plan citing TOC Zoning Law § 14.18.2. He continued that the applicant is asking for an interpretation of use and up to ZBA if requiring a Site Plan Review. Steven Melnyk stated that he was under the impression from the applicant that they had no problem and would apply for a Site Plan Review if required. Mr. Kleinbaum and Mr. Stringham did not agree. David Graziano stated that he was under the impression that the applicant was going to provide the Board with documentation to prove that the use of the site was never abandoned. Mr. Graziano continued that he felt that the applicant did not provide enough information to prove continuous use of the site just a letter from Mr. Karp. Mr. Graziano did not feel that the letter proves continued use and would require the applicant to produce a timeline of use of the site to ensure the property use was not abandoned. Rob Fitzsimmons asked if there were any public comments regarding the site. Mary Daly of Webb Rd. stated that she has lived on Webb Rd. since 1999 and the site was abandoned and neither repair activity nor any other activity was going on until the current owner built a roadway from the property on to Webb Rd. directly across from her driveway. Mrs. Daly asked if the roadway was legal. Dennis Callahan stated that the roadway is permitted for access to the residential portion of the property only and added that Webb Rd. is a town road and has a weight limit. Rob Fitzsimmons stated that the entrance to the commercial portion of the property is from NYS Rte. 23-B. Gary Steenburn asked if the TOC has any regulations regarding the amount of biodiesel that may be produced by such an operation. Rob Fitzsimmons stated that the Building Code regulates this issue. Mr. Stringham and Mr. Kleinbaum asked the ZBA for a continuance of the application because of the new information that they received from Dennis Callahan prior to the meeting. Mr. Stringham and Mr. Kleinbaum ask that they be allowed to review the new maps and information and return to the April meeting. Rob Fitzsimmons reminded the applicant that the Board is requiring that they show proof of continued use for the property. Norma Barnard asked why the applicant installed the driveway. Mr. Stringham answered that the driveway is permitted for emergency and maintenance use only. Continued to April.

**C G Crafts, Inc.:** Tax Map # (SBL) 121 . 3 – 1 – 32 Located at 47 Maple Ave. Area Variance.

Tim Wyman the owner of the property was present for the application. Mr. Wyman is the owner of 47 Maple Ave. and the two properties next to this building. Mr. Wyman has refurbished the former Hickey's Store and converted it into a two family dwelling. The former building contained a retail grocery store on the first floor

and a single-family residence on the second floor. Mr. Wyman is appearing before the ZBA asking for an Area Variance. Mr. Wyman explained to the Board that ZBA regulations require 40,000 square feet of property for a two family dwelling. Mr. Wyman continued that he recently reconfigured his properties adding the old railbed to the store property, which did add square footage but still not enough footage to meet the requirement. Mr. Wyman informed the Board that he has approved perk test from Columbia County Department of Health for the soils behind the store on the railbed property. Mr. Wyman informed the Board that he plans to install a dosing tank with a pump station. Rob Fitzsimmons informed the Board that ZBA regulations require 40,000 square feet and Mr. Wyman's property contain only 14,000 square feet. Norma Barnard stated that in her opinion Mr. Wyman has improved the site. Rob Fitzsimmons asked the Secretary, Jodi Keyser if the application was noticed for public hearing. Mrs. Keyser informed the Board that the application was noticed in the Register Star for public hearing and that adjoining property owners were notified by certified mail. Chairman Frank Clegg opened the meeting to public hearing at 8:35 p.m. Bob Atwell of Old Lane asked if the property had enough property to allow for parking. Mr. Wyman answered yes he has two spaces in front of the dwelling on Maple Ave, two spots across Maple Ave. from the property and 4 spaces in the rear of the property. Mr. Wyman also informed the Board that he has a driveway permit granted by New York State Department of Transportation for a driveway in the rear of the dwelling. Mr. Atwell then informed the Board that he was the previous owner of the property and when he owned the property the railbed behind the store was not owned by Leon Cook. Mr. Atwell is concerned with the parking situation. Norma Barnard informed the Board and Mr. Atwell that she called the County offices to inquire about the ownership of the railbed and was told that Mr. Cook did in deed own the railbed and that Mr. Wyman now owns the property. Susan Troy of Old Lane addressed the Board to state that when she and Mr. Atwell owned the dwelling in question they were told that they could not convert the building into a two family residence so why is it ok now. Wants things to be fair. Mr. Wyman stated that they are correct the building could not be converted into a two family dwelling prior with the amount of property, but now that he has purchased the railbed property and joined that with the store property it only requires an Area Variance. No further public comments Chairman Frank Clegg closed the public comment at 8:40 p.m. Norma Barnard stated that the plan does follow the Comprehensive Plan. Rob Fitzsimmons reviewed the SEQRA for the Board. Motion for Paul Gundrum made Negative SEQRA declaration with a second from Norma Barnard. All members were in favor. Motion carried. Motion to approve an Area Variance for a 3 bedroom two family dwelling on 14,070 square feet was made by Paul Gundrum with a second from Jock Winch. All members were in favor. Motion carried. Fees for certified mailing in the amount of \$74.71 was paid.

Informal:

**Caren Mahar/Camp Subdown Xeroderma Pigmentosum Society Inc.:** addressed the Board to ask for guidance with a project for Camp Sundown/Xeroderma Pigmentosum Society Inc. Mrs. Mahar explained that the camp her family owns is run for people who have Xeroderma Pigmentosum was operational for 6 weeks during last summer. Mrs. Mahar stated that the camp is only scheduled to be operational this summer for 2 weeks. She continued to explain that to maintain the property is costly. Mrs. Mahar was approached by a nursery school to rent the camp from September through June. Mrs. Mahar stated that she is wondering if this plan would require a Use Variance or a Modification to her previously approved Use Variance. Board members directed her to apply for a Use Variance and Special Exception. Mrs. Mahar will consult with TOC Building Department Stan Koloski.

Motion to adjourn the meeting was made by Paul Gundrum with a second from Jock Winch. All members were in favor. Motion carried. The meeting was adjourned at 8:50 p.m.

Respectfully submitted,  
Jodi Keyser  
Secretary