

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544
Minutes: April 22, 2009
7:30 p.m.

APPROVED 5/27/09

Chairman Frank Clegg called the April 22, 2009 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Pledge of Allegiance was led by Chairman Frank Clegg.

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

Correspondence was received from Town of Claverack Building Department Building Inspector Report for January 2009 & February 2009.

The Board members reviewed minutes of March 25, 2009 meeting. Norma Barnard asked that the record show the first line regarding the Stringham Interpretation of Use, which stated that Mr. Kleinbaum stated that TOC Justice Michael Brandon modified the judgement to state that the applicant may apply for an Interpretation was only a statement by the representatives for the applicant. Norma Barnard stated that as far as she was concerned the written order supplied to the Board members is the judgement and that written documentation of aforementioned item will need to be submitted to the Board. Rob Fitzsimmons stated that he would submit documentation at the May meeting.

Motion to approve the March 25, 2009 minutes as written was made by David Graziano with a second from Norma Barnard. All members were in favor. Motion carried.

Continuing Board cases for 4/22/09:

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 as of today's date the applicant has not received the NYS DEC permit. Mr. Griggs continued that the Columbia County Planning Board approved the application on 4/21/09. Mr. Griggs submitted an addendum to the SEQRA on 4/22/09. Rob Fitzsimmons reviewed the Draft Resolution for the Board members, which include the Special Exceptions that the TOC ZBA Board is implementing. These conditions include setbacks to be kept as proposed which exceed the TOC setback regulations as planned, hours of operation of 7:00 a.m. – 6:00 p.m. Monday through Friday and 8:00 a.m. – 2:00 p.m. on Saturday closed on Sunday, reclamation shall remain as proposed and any modification to the reclamation plan will require TOC ZBA approval, etc. Rob Fitzsimmons informed the Board that the TOC issues a permit with the conditions set by the TOC ZBA. The TOC permit is then sent to the NYS DEC for final approval. Rob Fitzsimmons informed the applicant that the TOC ZBA would need a copy of the Reclamation Plan and the bonding to the TOC office building. With the public comment still open from the March 2009 meeting Chairman Frank Clegg asked if anyone had comments regarding the application. Chris Post of Rte. 9-H asked if the NYS DEC permit could be sold. Rob Fitzsimmons stated yes but any new owner will be required to abide by the NYS DEC permit, TOC ZBA conditions, and set up new reclamation bonding with the TOC. Chris Post asked what happens if the new owner wants to make any changes to the mining operation. Rob Fitzsimmons stated that any proposed changes would require TOC ZBA and NYS DEC approval. With no further comments Chairman Clegg closed the public comment at 7:45 p.m.

Motion to approve the Resolution for Special Exception was made by Jock Winch with a second from Steven Melnyk. Board members were polled for their votes as follows: Frank Clegg – yea, Norma Barnard – yea, Oliver Milot – yea, Steven Melnyk – yea, Jock Winch – yea, Paul Gundrum – yea, and David Graziano – yea.

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 Mr. Kleinbaum were present for the application returning from the March meeting. Mr. Kleinbaum and Mr. Stringham submitted packets containing 5 affidavits from 5 separate persons attesting to continued use of the site in question as a repair shop. Also Mr. Kleinbaum submitted correspondence between his client and the Town of Claverack Building Department regarding the situation. Mr. Kleinbaum informed the Board that the items submitted are documentation that proving continued use. Mr. Kleinbaum stated that Fusion Motorcycles has left their space at the site but COARC would soon be renting space at the rear of the property for repairing their fleet of vehicles. Mr. Kleinbaum then informed the Board members that he has checked into the two different Zoning lines separating the property and the building. Mr. Kleinbaum stated that NYS prohibits zoning lines from dissecting a property and building into two different zones. Therefore Mr. Kleinbaum stated that it was illegal for the TOC to draw the zoning line across Mr. Stringham's property making half Rural Residential and the other half Highway Commercial and should be held invalid. Mr. Kleinbaum then stated that the TOC does not require Site Plan reviews for commercial properties within the Highway Commercial Zone. Jock Winch stated that the applicant was getting way off of the issue. Mr. Winch stated that to his understanding the applicant was asking for an Interpretation and now is bringing up other issues that are too legal in nature. Mr. Winch continued that the Board needs to make a decision on the issue of Interpretation of Use and decide whether the use of a repair shop was abandoned or not and get on with the meeting. Mr. Winch then asked Rob Fitzsimmons what the interpretation is from him. Rob Fitzsimmons then stated that the TOC Building Department felt that the application should be required to go through a Site Plan Review with the ZBA. Rob Fitzsimmons continued that the applicant and his attorney feel that they do not need a Site Plan Review because the property is partly within the Highway Commercial Zone. David Graziano stated that to his understanding the Interpretation of Use referred to TOC Zoning Regulations § 12.6.12 abandonment of use. Mr. Kleinbaum stated that he submitted the documentation to the Board proving that the use of the site had not been abandoned (5 affidavits). Norma Barnard stated that the affidavits were not proof and she could get 5 friends to write an affidavit attesting to something but that does not mean that it is true. Also the affidavits were not even notarized. Chairman Frank Clegg, Norma Barnard, and Jock Winch all stated that the applicant did not prove his case and they know that the site was not being used for any type of repair business for several years. Rob Fitzsimmons informed the Board that they need to determine whether they will require the applicant to apply for a Site Plan Review or not. Rob Fitzsimmons continued that a change of use also would require a Site Plan Review so the ZBA needs to make a decision. Mr. Kleinbaum then informed the Board that abandonment means that there was no such business at the site it does not mean that repair needed to take place for it to be considered a repair shop. Jock Winch then stated that the ZBA asked for definite proof that there was a repair shop at the site or not. Rob Fitzsimmons informed the Board that a use does not necessarily mean that the use was taking place i.e. Malasky Mobile Home keeping one person at the building to say it was a business. Chairman Frank Clegg opened the meeting to public comment at 8:00 p.m. Mr. Gary Steenburn stated that at the last meeting in March the applicant stated that COARC was renting space for repair and at this evenings meeting they are saying COARC will soon to be renting space. Mr. Steenburn wants clarification. Mr. Kleinbaum stated soon to be but was corrected by Mr. Stringham who stated that COARC is currently using the site. Mr. Steenburn then asked about the lawsuit or court order regarding the site. Rob Fitzsimmons informed Mr. Steenburn that the TOC Building Department received a complaint that something was happening at the site with fill being moved and other things going on. When the TOC Building Department investigated the site they determined that the applicant did not apply for a permit for the work and felt that the applicant needed to apply for a Site Plan Review. The TOC issued a stop work order which led to a court hearing at which Justice Brandon issued an order requiring the applicant apply for a Site Plan Review. Rob Fitzsimmons continued that Justice Brandon had written the order prior to hearing the case and after hearing both parties stated that the applicant could apply for an Interpretation of Use instead of a Site Plan Review quoting Justice Brandon, "... did realize that the applicant has greatly improved the site however the applicant can not disregard the rules set by the TOC Zoning regulations...." Mr. Steenburn then stated if he is understanding the rules correctly then the applicant was in violation at the March meeting and needed a decision regarding the

Interpretation of Use before allowing another renter (COARC) other than Fusion Motorcycles to rent the site. Rob Fitzsimmons answered yes. Rob Fitzsimmons then stated that the Board should make a motion for purposes of SEQRA and asks the Board members if they feel that there are any significant environmental impacts at the site. Board members discussed the changes and types of business decided that they could not definitely make a decision for the purpose of SEQRA. Motion that ZBA Board members discussed SEQRA and can not determine if any significant and therefore deemed exempt as an Interpretation of Use was made by Jock Winch with a second from Steven Melnyk. All members were in favor. Motion carried. David Graziano stated that he has concerns with the large gaps of time unaccounted for by the use for the site. Motion to find evidence was inadequate to prove non-abandonment of use for property was made by Jock Winch with a second from Steven Melnyk. All members were in favor. Motion carried. Motion to even assuming that there was not an abandonment of use the Town of Claverack Zoning Board of Appeals determines pursuant to § 14.18.2 that the change in building/structure/use requires a Site Plan Review was made by Jock Winch with a second from Steven Melnyk. All members were in favor. Motion carried. Rob Fitzsimmons will draft a finding for review at the May 27, 2009 meeting and will send a copy of the finding to Town of Claverack Justice Brandon. Continued to May as a Site Plan Review.

New Applications:

Khalifeh, Tareq/dba Philmont Family Dentistry: 1078 Rte 217 Philmont. Tax Map #(SBL) 113 . – 1 – 20 . 120 Special Permit for addition to structure housing an existing dental practice.

Geno Khalifeh and Ben Doty were present for the application. Chairman Frank Clegg asked the applicant's representatives for an explanation of the application. Mr. Khalifeh informed the Board that his brother owns and operates a previously established dental practice next to Pine Haven Nursing Home. Mr. Khalifeh informed the Board that his brother purchased the practice from Dr. Potrezeba who ran the operation for 27 years at the location. Mr. Khalifeh stated that the practice has grown and the operation finds the need to add another hygienist and space to accommodate added equipment, patients, and staff. Rob Fitzsimmons stated for the Board that the practice predates the TOC Zoning regulations therefore it is considered to be grandfathered. Rob Fitzsimmons informed the Board that the TOC Building department has sent the applicant to the ZBA because any expansion requires a Special Exception. Chairman Frank Clegg asked if Village of Philmont water and sewer service the current building. Mr. Khalifeh stated that the building has Village water but has a private septic system. Jock Winch asked that the added hygienist would add water to the system. Jock Winch continued to ask if the additional water usage require Columbia County DOH approval. Mr. Khalifeh stated that the practice is figuring an increase of approximately seven more patients and one hygienist per day. Mr. Khalifeh stated that the business had the septic tank pumped last year and there was no signs of any problems at that time and has never had issues over the many years of the practice. Rob Fitzsimmons stated that if there ever should be a problem then it is the responsibility of the owner to fix but the Board could ask for CC DOH review if they deem it necessary. Chairman Frank Clegg stated that there is amply property behind the building if there was ever a problem with the septic. Joe Romano stated that he does not foresee any problems with the septic. Joe Romano continued to state that he did see one item of concern being the Handicapped parking needing a stripped space next to the designated handicapped parking space. Mr. Khalifeh and Mr. Doty both stated that the parking area will be re-paved and the handicapped spaces will be relined. Chairman Frank Clegg opened the public comment at 8:30 p.m. Caren Mahar stated it is a great idea. No further comments public comment was closed at 8:31 p.m.

Motion for negative declaration with regard to the SEQRA was made by Paul Gundrum with a second from Jock Winch. All members were in favor. Motion carried.

Motion to approve Special Permit pending condition for applicant confirming the adequacy of the septic system with Columbia County Department of Health was made by Norma Barnard with a second from David Graziano. All members were in favor. Motion carried. Certified mailing fee of \$18.72 paid by Mr. Khalifeh with check.

Xeroderma Pigmentosum Society Inc./Caren Mahar: 437 Snydertown Rd. Craryville. Tax Map #(SBL) 153. – 1 – 2 for Special Permit to allow Nursery School-Day Care from September through June.

Caren Mahar was present for the application. Mrs. Mahar also submitted the previously approved Site Plan for her Camp Sundown. Mrs. Mahar informed the Board that usually her camp runs for six weeks during the summer for children who have xeroderma pigmentosum. Mrs. Mahar continued that this year she has reservations for only two weeks. Mrs. Mahar stated that the camp and buildings are expensive to maintain. Mrs. Mahar stated that she is asking for a Special Use permit to rent the space to a Nursery school. Mrs. Mahar informed the Board that the Nursery school will run according to the Taconic Hills School District calendar, accommodate 15 students, and will run as a cooperative school having parents volunteer and onsite. Chairman Frank Clegg opened the public comment at 8:40 p.m. Skip Hover stated that this is a wonderful idea and a benefit to the county. No further comments closed public comment at 8:41 p.m. Rob Fitzsimmons reviewed the TOC Zoning regulations regarding Nursery schools and found that the application conforms. Rob Fitzsimmons informed the Board that the application is exempt from Columbia County Planning Board review due to no expansion of the site only alteration of use. Also there will be less children on a daily basis then when the camp is running.

Motion for Negative Declaration with regard to the SEQRA was made by Paul Gundrum with a second from Norma Barnard. All members were in favor. Motion carried.

Motion to approve Special Use Permit was made by Jock Winch with a second from Norma Barnard. All members were in favor. Motion carried. Mrs. Mahar paid certified mailing fees of \$9.36 by check.

Motion to adjourn the April 22, 2009 meeting at 8:45 p.m. was made by Norma Barnard with a second from Steven Melnyk. All members were in favor. Motion carried.

Respectfully submitted,

Jodi Keyser
Secretary