

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544

Minutes: July 23, 2008

APPROVED 8/27/08

Acting Chairman Jock Winch called the July 23, 2008 meeting of the Town of Claverack to order at 7:30 p.m.

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

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

Correspondence was received from the TOC Building Department with the June 2008 Building Inspector's Report.

Norma Barnard asked that amendment to the Tipple application show that no roosters were also a condition of the approval. Motion to accept the revised minutes of June 25, 2008 was made by 1st David Graziano with a 2nd from Norma Barnard. All members were in favor. Motion carried.

Continuing Board cases for 7/23/08:

Claverack Corners LLC:— 344 State Rte 23-B Claverack. Tax Map # (SBL) 121 . 3 – 1 – 16. Use Variance, Site Plan Review, Special Exception Construction of 6500 foot, two story building containing 3 office/retail units and a restaurant on level #1 with 4 apartment units on level #2.

Andrew Howard, attorney for the applicant and Thomas Quigley applicant were present for the public hearing for Special Exception for multiple use building. Mr. Howard gave the Board members a brief overview of the application. Mr. Howard stated that the Quigleys purchased the property and spent money for a cleanup of the contamination from the previous gas station. He informed the Board that the applicants want to construct a multi-use building at the site to house a restaurant, office/retail space, and affordable housing for working residents of the hamlet. Mr. Howard reminded the Board that all of the uses are allowed within the Highway Commercial Zone alone and the application is not asking to have a non-allowed use at the site. Also Mr. Howard informed the Board that allowing the multi-use at the one site requires much less area/space then each use would alone. Mr. Howard submitted a non-self-created hardship argument to Board members. Rob Fitzsimmons read a letter from Katy Cashen who is in favor of the application. Also Rob Fitzsimmons read e-mails from Laurie Fiederlein, David Foley and Elizabeth Katseveos which were submitted to the file. Acting Chairman Jock Winch read the law from NYS regarding what is required for the ZBA to grant a Use Variance. Acting Chairman Winch stated that he wanted the audience and the applicant to understand what the ZBA was up against in order to be able to grant this Use Variance. Acting Chairman Winch asked the members of the Board whether they had any questions of the applicant. David Graziano informed the applicant that he felt that the applicant had not proven the non-self-created hardship issue. Mr. Graziano stated that the applicant knew the cost when they purchased the property and he also felt that the financial statement submitted by the applicant was insufficient. Paul Gundrum agreed that the financial statement was insufficient. Acting Chairman Winch opened the meeting to the public hearing at 7:52 p.m. Joan Steiner of Rte. 23 read letter favorable of the application for approval

and will be a gathering center for the community. Also she stated that the proposal is exactly the type of structure the Comprehensive Plan is in favor of and making the applicant wait for 2 years for the changes to zoning could jeopardize the project. David Colby from the Columbia County Chamber of Commerce informed the Board that the Chamber shares the economic benefit of the project to the area because of the added retail business and need for affordable housing. Mr. Colby also stated that multi-use fits the Comprehensive Plan, follows good growth, and is neighbor owned. Susan Roberts of Fish & Game Road stated that she understood the issues that the Board needed to follow to be able to approve the Use Variance but would like to reiterate the benefits of the project to the area and the site. Ms. Roberts stated that she is concerned that if the Board does not approve this project then something else much less favorable might be allowed at the site in the future. Norman Merritt of Rte 23 stated that he remembered when the proposed site had a large apartment building not much different in size to the proposed project. This was previous to the building being torn down to make way for the gas station. He has seen the evolution of the site. Mr. Merritt stated that he is in favor of the plan due to the revitalization of the site but he also stated that he is unfamiliar with the design and parking. Ian Nitschke of 602 Rte. 23-B owns an historic Dutch home near the site and has concerns with design. Should take into consideration historic nature of area. Mr. Nitschke also informed the Board that he felt the applicant should have been aware of the hardship prior to purchasing the site. Jenny Post asked the Board if they could consider the project in a different way in order to approve. Gretchen Stearns of the Comprehensive Plan Committee which is now the Zoning Committee stated that she has heard from many citizens asking that mixed use be allowed within the zoning laws sooner. Dr. Stearns informed the Board and audience that creating new zoning laws and making changes to the current zoning laws needs to take time and much thought. Can not hurry. Dr. Stearns then addressed Rob Fitzsimmons regarding section (9.4.12) of the current Zoning Laws called a PAD (Planned Residential Development) which would allow the ZBA to deny the application but then send the applicant to the Town of Claverack Board to ask for the zoning at the site to be changed to allow for the project to proceed. Dr. Stearns stated that this would take the application from the ZBA, which can not approve and send the application to the Town Board to make a decision. Dr. Stearns then informed the Board that the Town Board could make the change to the site zone to PAD and then the application would come to the ZBA for Full Site Plan Review. Rob Fitzsimmons stated that the application could take this approach if the applicant so wished. Cyndy Hall of Old Lane informed the Board that the ZBA is held to the current Zoning Laws but the project has overwhelming citizen backing. Ms. Hall urged the Board to send the application to the Town Board to seek the zoning of the site be amended to PAD. Acting Chairman Jock Winch closed the public hearing at 8:34 p.m. Acting Chairman Jock Winch stated that he was in favor of the project but the ZBA is unable to approve due to the current Zoning Laws. Rob Fitzsimmons informed the Board and the applicant that the Town Board would have to make a one-time zoning change to the site. Norma Barnard and Paul Gundrum both stated that they were in favor of the plan but due to current Zoning Laws are unable to grant the approval for a Use Variance. Rob Fitzsimmons advised the ZBA to make a determination on the application and refer the applicant to the Town Board for resolution. Rob Fitzsimmons reviewed the SEQRA for the Board. Motion for negative declaration regarding SEQRA was made by 1st Paul Gundrum with a 2nd from Norma Barnard. All members were in favor. Motion approved. Motion to deny the Use Variance due to multiple uses due to lack of financial need and non-self created hardship was made by 1st Paul Gundrum with a 2nd from Norma Barnard. All members were in favor. Motion carried. For the record the members of the Zoning Board of Appeals were supportive of the application but due to legal issues the Board is unable to grant. Sent application to Town Board for potential change in zoning at the site.

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.

No new information to report to the Board.

Schober/Kosich: 3 Route 217 Claverack Intersection of Rte 23 & 217. Tax Map #(SBL) 121 - 1 - 60 Use Variance for Nursery School/Daycare.

No show. Rob Fitzsimmons reported that the applicant is now looking at a site in the village of Philmont. Mr. Fitzsimmons heard that the applicant found out from the DOH that upgrades would be needed to the septic and well systems at 3 Route 217 that would be cost prohibitive for her to purchase the property for the use.

New Applications:

JimCin Realty/DBA Yorkshire Farms Restaurant: 484 Rte 23 Claverack. Tax Map #(SBL) 132 . – 1 – 20. Site Plan Review for installation of a 30' X 40' tent to cover patio area from April to November for catering events.

James and Cindy Pruesser were present for their application. Mr. Pruesser informed the Board that he and his wife purchased the Yorkshire Farms Restaurant 2 years ago and have made some minor changes to the landscaping and aesthetics of the property. They want to increase the revenue stream by having outside dining and catering events. Mr. Pruesser informed the Board that the property has a patio, which would allow for such dining but is weather prohibiting. Mr. Pruesser informed the Board that he had a gazebo on the patio but this did not work due to size and weather. Mr. Pruesser is asking to erect a 30' x 40' tent over the patio to be able to use the site regardless of the weather. Mr. Pruesser was asked if the tent is currently erected over the patio. Mr. Pruesser stated affirmative and that he was unaware that he needed a permit for the tent. Norma Barnard asked the applicant about a pool business that is also using the site of the restaurant, which is not allowed. Mr. Pruesser stated that the pool business is his brother's business and he uses the site for storage only. Pools are dropped off at the site. Mr. Pruesser stated that no pool sales take place at the site and there is no sign for JJRT Pools and Spas. Rob Fitzsimmons informed the applicant that the TOC Building Department upon investigation of the tent/patio issue found a second business on the site, which is against zoning, and this information was passed onto the ZBA members via letter from Stan Koloski. Mr. Fitzsimmons also informed the applicant that a neither a pool business or storage for the pool business is allowed on the same site as the restaurant. Rob Fitzsimmons read the letter supplied to the ZBA members from Stan Koloski to the applicant which stated, "Spoke with Pruesser's and were informed the pool business will be removed from the property shortly." Mr. Pruesser informed the Board that he was not contacted by Stan Koloski or any other TOC Building Department employee regarding the pool business at the site. Mr. Pruesser stated that he was unprepared to answer questions regarding the pool business and felt that he was caught off guard by the Board. Rob Fitzsimmons informed Mr. Pruesser that another use on the same site as the restaurant is not allowed. Mr. Pruesser informed the Board that the site is not a separate business but is only a drop off and storage for his brother's business. Mr. Pruesser informed the Board that there is no sign for any other business at the site. Paul Gundrum showed the applicant a picture showing pool sales sign on a shed on the restaurant property. The picture was provided to the Board members along with the above-mentioned letter. Acting Chairman Winch informed the applicant that the Board could make the removal of the pool business a condition of the approval. Rob Fitzsimmons informed the applicant that a second use i.e. pool business at the site would require approval from the ZBA. Board members asked Mr. Pruesser the hours of operation for the patio area. Mr. Pruesser informed the Board that the patio area would be opened from April to November weather permitting for weddings, banquets, and outside dining. Acting Chairman Jock Winch informed the applicant and Board members that Site Plan Review is required due to expanding commercial operation. Joe Romano informed the applicant that strict hours of operation should be required because of noise complaints from neighbors. Mr. Pruesser informed the Board that most of the time the music is provided by a one-man band, Paul Slusar and sometimes a D.J. service is used with mostly dinner music. Mr. Pruesser stated that his business is respectful to the neighborhood by containing the noise levels with a tent/fence and stopping the music at 10:00 p.m. Acting Chairman Winch opened the meeting to the public at 8:45 p.m. Stephen Hook of Rte. 23 addressed the Board stating that his house is located on the hill directly above the business. Mr. Hook stated that he felt the applicant is not concerned with the neighborhood because music from the patio is loud, late at night, and into the early morning hours. Mr. Hook informed the Board that he has had to close his windows to keep out the noise, even from Paul Slusar. Mr. Hook's job requires him to be to work early in the a.m. and the noise from the site keeps him awake. Acting Chairman Jock Winch stated that he felt that TOC Building Inspector should have addressed his concerns regarding the pool business with Mr. Pruesser prior to sending the letter to the ZBA members. Mr.

Pruesser informed the Board and audience that his business is closed at 10:30 p.m. and never music into the late night or early morning. Mr. Pruesser stated that he and his wife just want the business to grow and create a nice restaurant for the area. Mr. Pruesser stated that he was unaware of any complaints regarding music and noise from his business. Rob Fitzsimmons informed Mr. Pruesser that the TOC has received multiple complaints from several different neighbors regarding the noise from his business. Mr. Pruesser informed the Board that his hours of operation for the patio area will be April 1st through November 30th, 7 (seven) days a week as needed, weather permitting and no music after 10:00 p.m. ever. Motion for negative declaration regarding SEQRA was made by 1st Paul Gundrum with a 2nd from David Graziano. All members were in favor. Motion carried. Motion to approve Site Plan Review with conditions of hours of operation for the patio consisting of April 1st through November 30th, 7 (seven) days per week as needed, weather permitting, and no music after 10:00 p.m. ever. Also condition that pool business be completely removed from restaurant site was made by 1st Paul Gundrum with a 2nd from David Graziano. All members were in favor. Motion carried.

Motion to adjourn meeting was made by 1st Paul Gundrum with a 2nd from David Graziano. All members were in favor. Motion carried. Meeting adjourned at 9:00 p.m.

Respectfully submitted,

Jodi Keyser
Secretary