

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544
Minutes: March 24, 2010

Approved 4/28/10

Chairman Frank Clegg called the March 24, 2010 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 Clegg, Stephen Melnyk, Norma Barnard, David Graziano, Oliver Milot, Paul Gundrum, Jock Winch, Attorney; Rob Fitzsimmons, Engineer; Joe Romano, and Secretary; Jodi Keyser. Norma Barnard made a motion seconded by Oliver Milot to approve the minutes of February 24, 2010 as written. All members were in favor. Motion carried.

Continuing Board cases for 3/24/10:

Luis Lopez / DBA Coyote Flaco: Tax Map # (SBL) 131 . - 1 - 5

Located at 6032 Route 9-H & 23. Area Variance new signs for Mexican Restaurant business.

Mr. Paul Freeman and Louis Lopez were present for the application, Mr. Freeman submitted a Draft Resolution and informed the ZBA members that his client has posted the required signs notifying of the public hearing for 3/24/10. Secretary Jodi Keyser informed the ZBA members that a second set of certified mailings notifying of the public hearing were sent out. Mr. Freeman reviews the application for the Board. Mr. Freeman stated that his client, Luis Lopez operates a Mexican Restaurant at the site of the former Moose Head Tavern on Rte. 9-H. Mr. Lopez is seeking an Area Variance to add an additional 18 square feet of signage on the façade and along each post of the front porch advertising his business. Mr. Freeman continued that he understood that Mr. Tallackson had conceded the pre-existing, non-conforming use issue on behalf of his clients after the historical documentation and affidavits that were provided as proof of continued use as Bar/Restaurant/Tavern. Mr. Freeman also submitted argument for supporting the 5 criteria of granting a Variance. (submitted to file) Mr. Freeman also submitted a Short Form SEQRA. Rob Fitzsimmons reminded the Board that the applicant is seeking an Area Variance for adding 18 square feet of signage to the existing 30 square feet. Additionally Mr. Fitzsimmons stated that Mr. Lopez is seeking the amount of signage, which is allowed in the HC zone for the type of business, but because the business is a pre-existing non-conforming use within a RR zone adding the signage requires an Area Variance. David Graziano asked if Mr. Freeman had any pictures of the original Fatso's. Mr. Freeman stated that the pictures that were submitted were what he was able to find. David Graziano stated that he did not see any signs on the posts for the original Fatso's and therefore feels that the ZBA should not expand on a non-conforming use by allowing additional signs. Paul Gundrum stated that the picture being viewed is from 2003 and that he knows for a fact that the business was in between owners at the time. Mr. Gundrum continued that the owners had removed a large sign from the roof of the building that hung over the original Fatso's sign. David Graziano stated that he has a hard time making sense of the additional signage not being an expansion of a non-conforming use and how previous signs were allowed. Mr. Freeman stated that because the TOC ZBA laws do not speak to signs for a non-conforming pre-existing use within a RR zone he used the closest specifications for signs. Mr. Freeman stated that when looking at the TOC ZBA laws he used the standards set within the guidelines for the Industrial Complex that do not allow for the identification of any specific product or service. Norma Barnard stated that TOC Zoning laws were not in effect in 1957 when the establishment was Fatso's therefore the signs were not regulated. Mr. Freeman stated that the business is a pre-existing non-conforming use and he understands that expanding the signs for such a use requires an Area Variance if the applicant can prove the 5 criteria for granting a Variance. Mr. Freeman continued that the applicant is not seeking to make a dramatic change only asking for the amount of signage, which would be permitted for such a business if it were within the HC zone. Chairman Frank Clegg opened the meeting to the public hearing at 7:50 p.m. George Starr asked if the signs will be self-lit or have self-contained lighting. Mr. Freeman stated that the signs will have gooseneck lights directed at the signs. Mr. Tallackson addressed the ZBA

asking that the Board review the documentation submitted on behalf of his clients arguing that applicant should be seeking a Use Variance and not an Area Variance for the non-conforming use because the ZBA has not agreed on the Bar/Restaurant/Tavern issue. Rob Fitzsimmons read from the 2/24/10 approved minutes stating that Mr. Tallackson rested that argument and conceded that the supporting documentation submitted by Mr. Freeman proved the pre-existing non-conforming use of the site. Mr. Tallackson continued that he still argues the issue and feels that the applicant should be seeking a Use Variance instead of an Area Variance. Mr. Tallackson continued that TOC ZBA law does not allow for the expansion of a pre-existing non-conforming use within a RR zone and the applicant is a self-created hardship because he purchased the building with existing signage. MaryAnn Slovak addressed the Board citing all signs are pursuant to Section 11 and require a full Site Plan Review, which will require the applicant to prove that it is not a self-created hardship. Ms. Slovak continued that previous signs were not permitted and their size and placement were not addressed by the TOC. Ms. Slovak stated that the applicant should seek other forms of advertisement such as newspapers to alert the public to the business. Ms. Slovak stated that the site has limited area for parking and previous owners have allowed parking along Rte. 9-H, which created a dangerous situation. Ms. Slovak stated that in her opinion the signs are a dramatic change and that the lighting for the signs impacts her home across the street. Ms. Slovak continued that she has visited some of Mr. Lopez's other restaurants and has found them to be very nice but is concerned with the future of the site. Ed Sturges addressed the Board stating that he is the angry neighbor that the Board members have heard about. Mr. Sturges continued that he grew up in the area and wanted to purchase the house across the street from the applicant. Mr. Sturges stated that prior to the purchase he contacted then Supervisor James Keegan stating that he was interested in purchasing the property across the street and asked what the chances were that someone with a great deal of money could buy the property and make it into something undesirable. Mr. Slovak stated that Mr. Keegan informed him that the property would not be allowed to change so he purchased the property across the street. Mr. Sturges stated that for the next 5 years they had no problem with the business, which changed owners 2 times. Mr. Sturges stated that the situation changed when Mr. Matt Michael purchased the property. Mr. Sturges stated that the noise, lights, and traffic became so bad that he contacted Mr. Keegan to complain numerous times. Mr. Sturges stated that he was assured by Mr. Keegan that he would look into the situation. Mr. Sturges stated that he sent letters to the TOC and to the TOC building department but were unanswered. Mr. Sturges stated that he asked to meet with Building Inspector, Stan Koloski but was told he was too busy. Mr. Sturges continued that he then hired a lawyer and has been fighting since. Mr. Sturges stated that he feels that his rights have been violated, hired a lawyer, and the TOC officials did nothing. Mr. Lopez then opened his business and forced the issues by asking for patio dining and changing the signs. Mr. Sturges stated that to his understanding the TOC Zoning Laws are to protect the public and to stop the expansion of non-conforming uses within the town. Mr. Sturges stated that he feels that nothing should be allowed to change. David Graziano asked Mr. Sturges if the problems began with the current operator, Mr. Lopez. Mr. Sturges answered, "no," but did start when the current owner of the property leased the building to the previous proprietor. Mr. Sturges stated that things got so bad he contacted the NYS Liquor Authority and the previous operator lost his liquor license. Mr. Sturges stated that the current owner has had a difficult time acquiring a liquor license because of the previous operator. Mr. Sturges stated that the business is quiet and not disruptive right now but thinks that is because Mr. Lopez does not have his liquor license. Rob Fitzsimmons directed that the previous operator had entertainment on the outside patio area at the right side of the building. Mr. Fitzsimmons stated that Mr. Lopez is not seeking the use of the patio area but is allowed to serve food and drinks on the front porch area with a previously permitted CO from the TOC building department. Mr. Fitzsimmons addressed that there were problems in the past with the right side patio area and the entertainment but that this application is only seeking to add signage and nothing else. Mr. Tallackson stated that to his knowledge the TOC ZBA has not made a determination as to the pre-existing non-conforming use issue as yet. Rob Fitzsimmons stated that the use occurred prior to TOC Zoning laws and that both parties have agreed to the pre-existing non-conforming use issue. Rob Fitzsimmons continued that the TOC ZBA needs to make a determination as to the pre-existing non-conforming use and wrap it into the signage issue. Mr. Tallackson stated that he and his clients have agreed to the site being a Tavern but that an eating establishment was not within the scope of the use which has become an ongoing issue. Chairman Frank Clegg stated that the NYS Department of Health food service code defines a Tavern as an eating establishment. David Graziano stated that he understands that the issue is not one of abandonment but whether the establishment was used as a Bar or a Restaurant or a Tavern. Mr. Tallackson agreed and continued that there are distinct differences between Bar, Restaurant, and Tavern. Rob

Fitzsimmons stated that the uses are similar in the fact that the volume of use will remain similar. Rob Fitzsimmons reads some examples of volume of use/scope of use that are similar to this application. Rob Fitzsimmons finishes with the statement that the difference between a bar and a tavern are not substantial. Mr. Tallackson conceded that a tavern would serve bar food i.e. burgers, wraps, appetizers but bar food to a full-scale restaurant is a change and therefore an increase in the volume of use. Stephen Melnyk asked Mr. Sturges and Ms Slovak whether they have better feelings about the new operator because it is a different type of clientele and improvements to the site are good. Mr. Sturges stated that he couldn't answer that question until after Mr. Lopez has acquired his liquor license. Tim Van Keuren another neighbor from across Rte. 9-H from the business stated that he is a 12-month resident and has had no problems with the site. Mr. Van Keuren stated that he does not hear any noise, the site is clean, has good food, and is a big improvement from the previous operator. Mr. Van Keuren stated that there is no parking along the highway, no neon signs, no noise from the property and that it is a respectable business. Mrs. Elizabeth stated that she has lived across the street from the property for over 20 years and has seen a 100% improvement from the previous two years. Jock Winch stated that the previous owner did not seek any approval for the front porch eating area and he is personally tired of covering others. Mr. Freeman then stated that his client is not seeking to change anything that was not already allowed at the site but is seeking to add some signage to the property. Not changing use, not making use larger, not creating a dental office or something other than what the site has been used as for since 1957. Ms. Slovak added that signs fall under a Use Variance wherever they are located. Rob Fitzsimmons informed the audience that the applicant has submitted all of the materials that would be required for a Site Plan Review and that this documentation was used by the Board to make their determinations for the application. Ms. Slovak informed the Board that lighting from the previous establishment has spilled out onto her property. Rob Fitzsimmons stated that the ZBA has not addressed lighting spillage to neighbors. Mr. Tallackson stated that if the ZBA is to approve the Area Variance for this application then the ZBA should also include specific conditions for lighting so that problems could be alleviated. Chairman Frank Clegg closed the public hearing at 8:30 p.m. David Graziano that as a technical aspect of the law for signs then the ZBA laws should look at the HC and RR zones to make them match. Paul Gundrum stated that it is not logical to make signage laws in those zones to match because you would not deal with signs in the RR zone unless for a non-conforming pre-existing use as this application. Rob Fitzsimmons stated that more area of signs are allowed in the HC zone and that one name plate is allowed within the RR zone. Rob Fitzsimmons continued that the site in question has always been the same type of business so the applicant is asking for what would be allowed for this type of business as if it were within the HC zone. Mr. Tallackson stated that no section of the TOC Zoning laws apply which causes a pick and choose type of action. Rob Fitzsimmons then asked the Board members their feelings regarding the draft resolution and the application. Stephen Melnyk stated that he was prepared to make a decision. Chairman Frank Clegg agreed that the business is a pre-existing non-conforming use within the RR zone. Paul Gundrum stated that he would be satisfied with approval of the resolution after conditions are added regarding lighting. Jock Winch asked about hours of operation. Stephen Melnyk asked the applicant if they plan to have normal hours of operation. Mr. Freeman stated that the establishment would have normal hours. Oliver Milot stated that he is satisfied with the application but would add conditions for the fugitive lighting. David Graziano asked what the objective of added signage is for the business reminding the applicant that Zoning laws prohibit signs that advertise products or uses. David Graziano stated that he would only want to see a sign advertising the establishment as Coyote Flaco. Norma Barnard stated that she was in favor of granting the Area Variance and agrees that the site is a pre-existing non-conforming use. Stephen Melnyk stated that all of the Board members agree that the site has been used as a Bar/Restaurant/Tavern/Eating Establishment for as long as anyone of the members can remember. Mr. Melnyk continued that he is empathetic with the plaintiffs for the problems with the previous operator of the site, but in the same token does not feel that they will have any issues with the current operator. Mr. Melnyk stated that the plaintiffs should be happy that it is a nice family restaurant and not a biker bar. Mr. Melnyk stated that he would be in favor of granting the Area Variance for the additional 18 square feet of signage with conditions for lighting. Jock Winch stated that in his opinion the current establishment is more in keeping with the area than the previous biker bar. Jock Winch stated that he does take issue with the fact that a CO permit was granted to the previous operator for outside eating on the porch without ZBA approval. Jock Winch continued that just because the TOC Building Dept. issued a permit it does not make it right. Mr. Winch stated that the TOC Zoning laws were set up to do away with non-conforming pre-existing uses. Mr. Winch continued that Mr. Sturges and Ms. Slovak have tried to stop problems and what happens if this business gets larger. Mr. Winch stated that he

could not grant the Area Variance in good faith. Chairman Frank Clegg then stated that size of signs, lighting conditions, and hours of operation will be added to the resolution to protect against problems. Joe Romano reviewed the SEQRA for the Board.

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

Rob Fitzsimmons read the draft resolution for the Board members. Rob Fitzsimmons advised the Board to first make a motion to determine pre-existing non-conforming use and then make the motion to approve the Area Variance with conditions.

Motion to resolve that the establishment in question is hereby determined to be of a pre-existing, non-conforming use which is situate within a Rural Residential Zone. Furthermore, it is resolved that the type of use of said establishment is determined to be that of a Bar/Restaurant/Tavern/Eating Establishment and verified as such since 1954 and preceding the Town of Claverack Zoning Laws established in 1972 was made by Norma Barnard with a second from Stephen Melnyk. Jock Winch abstained from voting. Motion was carried by majority of the ZBA members in favor.

Motion made by Stephen Melnyk and seconded by Paul Gundrum to approve the Area Variance to allow for an increase of signage by 18 square feet with the following conditions:

Lighting should be that of a gooseneck nature and broadcasting directly onto signage to ensure that fugitive lighting will not impact neighboring properties or roadways.

Lighting limited to hours of operation.

Hours of operation 12:00 p.m. to 12:00 a.m.

Removal of any and all superfluous signage.

David Graziano was opposed and Jock Winch abstained. Motion was carried by majority of the ZBA members in favor

Rob Fitzsimmons will add the conditions to the Resolution. Mr. Tallackson thanked the Board members on behalf of his clients, Mr. Sturges and Ms. Slovak for their attention to this application and the good faith effort to ensure that they are protected. Mr. Lopez paid \$61.56 cash for the certified mailing.

New Cases:

Rockefeller, David – Hawthorne Valley Association: Tax Map # (SBL) 141 . – 1 – 53 . 100 Located at County Rte. 12 between County Rte. 27 and Millbrook Rd. Site Plan Review for infrastructure to support an 85 – cow grass based dairy farm operation.

Martin Ping, Executive Director of Hawthorne Valley was present for the application. Mr. Ping informed the Board that Hawthorne Valley is seeking to establish an 85-head grass based dairy farm on Columbia County Rte. 12. Mr. Ping stated that he met with Stan Koloski for a building permit to build the needed infrastructure for the project. Mr. Koloski denied the application because it is considered a new business. Mr. Ping stated that he is not seeking a Variance but a Site Plan Review for a new business. Mr. Ping stated that the site consists of approximately 180 acres within the Town of Claverack and approximately 50 acres within the Town of Taghanic. Mr. Ping informed the Board that the infrastructure consists of a house, barns, milking parlor, and storage sheds to maintain 85 milking cows and approximately 85 heifers. Mr. Ping continued that they would maintain a solid manure system, which is emptied once a year and used on the fields. Rob Fitzsimmons informed the Board that this type of application falls under the NYS Ag & Markets as a 305A farm/agriculture and should receive an expedited review. Rob Fitzsimmons continued that the proposed project is not near the wellhead delineation area. Rob Fitzsimmons informed the applicant that building permits are required for each building. Joe Romano informed the Board and applicant that NYS DEC reviews agricultural uses differently than commercial uses and this project will require a Stormwater Pollution Plan but will not require a post Stormwater Plan due to the level of disturbance. Joe Romano continued that a permit from NYS DEC would need to compute out total area of disturbance. Chairman Frank Clegg asked about the type of manure system. Mr. Ping stated that the manure would be enclosed under the barn on concrete pads. Cows will be housed above and as the manure drops it will drop down. Fresh bedding consisting of straw and hay will be added everyday. The bedding material and manure will decompose under the building eliminating smell and flies.

Motion to set public hearing for the April 28, 2010 meeting was made by Stephen Melnyk with a second from Norma Barnard. Applicant paid check in the amount of \$142.56 for certified mailing.

Motion to adjourn the meeting was made by Paul Gundrum with a second from Norma Barnard. All members were in favor. Meeting adjourned at 9:30 p.m.

Respectfully submitted,
Jodi Keyser
Secretary