

APPROVED 4/26/17

Town of Claverack  
Zoning Board of Appeals  
P.O. Box V  
Mellenville, NY 12544  
Minutes: March 22, 2017  
7:30 p.m.

Chairman David Graziano called the March 22, 2017 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Members in attendance were: Chairman David Graziano, Steven Melnyk, John Porto, Chris Post, Roger Case, attorney; Rob Fitzsimmons, engineer; George Schmitt and secretary; Jodi Keyser

Chairman Graziano led members of the Zoning Board of Appeals and audience members with the Pledge of Allegiance.

Correspondence: None received

Board members reviewed the minutes of the February 22, 2017 meeting. Steven Melnyk informed the secretary that the last name of the lady for the informal presentation at the February meeting was misspelled and should be Ptasek. Motion to approve the minutes of the February 22, 2017 with spelling correction was made by Steven Melnyk with a second from Roger Case. All members were in favor. Motion carried.

#### **CONTINUING APPLICATIONS FOR 3/22/17:**

**Genito, Ronald & Linda Area Variance:** Tax Map #(SBL) 121 . 00 – 01 – 04 . 1 Located at 179 Rte. 9-H. Area Variance for driveway frontage of 100 feet for a right of way that is only 50 feet wide. Town Code requires 150 feet for a driveway.

Rob Fitzsimmons informed the Board members that Mr. Massaro was informed that the public notices for the application were not mailed therefore the public hearing is moved to the April meeting. Rob Fitzsimmons submitted the roadway maintenance agreement, revised SEQRA and notarized letter of representation to the file. Rob Fitzsimmons informed the Board that he reviewed the deed descriptions and they are o.k.

#### **NEW APPLICATIONS FOR 3/22/17:**

##### **Concra, Margaret & Vincent b/d/a Subway Interpretation of Use and Interpretation of Zoning Law for signs:**

Pat Prendergast was present for the application. Chairman Graziano informed Mr. Prendergast that he would need to supply the Board with a notarized letter from Ms. Concra granting permission for him to represent the application. Rob Fitzsimmons informed the Board that for the record Mr. Prendergast has been representing the Subway application that is presently under review with the TOC Planning Board. Mr. Prendergast informed the Board that his client is seeking to install a pole sign, sell propane and firewood at the establishment. Steven Melnyk stated that the propane and firewood are already being sold. Mr. Prendergast informed the Board that his client was selling the propane and firewood until the TOC Building Department told them to remove them. Mr. Prendergast continued that the Planning Board is currently reviewing the addition of an awning and some picnic tables but was did not like the idea of a pole sign. Mr. Prendergast continued that his client is seeking to install a pole sign in addition to the existing sign on the building. Mr. Prendergast informed the Board that the members of the Planning Board were not very receptive to the second sign. Mr. Prendergast referred to TOC Zoning Law Table #4 which allows for 2 signs. Chris Post read the TOC Zoning Law Section 14.4.2b which states that each business is allowed only one main sign. Pat Prendergast stated that the chart in the Zoning Law has two rows which show that two signs at 16 square feet are allowed. Steven Melnyk stated that the chart states that if the sign is on the ground it is 16 square feet or if attached to the building it is 16 square feet it doesn't say either or both. Pat Prendergast stated that in other towns that he has worked with two signs are allowed with a maximum size allowed. Rob Fitzsimmons informed the Board that

Planning Board member Gretchen Stearns who worked on the TOC Comprehensive Plan stated that the intent of the law was to allow for only one sign per business therefore Section 14.4.2b each principle business housed within a building that has multiple businesses allows for each business to have a sign not to exceed 4 square feet. Rob Fitzsimmons continued that there was a prohibition of sort for strip malls but then the Fink application was granted for a multi-use building under the previous law. Rob Fitzsimmons informed the Board that the applicant was recommended to come to the TOC Zoning Board of Appeals for an interpretation of the use and of the laws regarding signage. Rob Fitzsimmons continued that the site of the Subway business is a sensitive site and was looked at very carefully during the Comprehensive Plan and Zoning law revisions. Rob Fitzsimmons added that the Planning Board and Town of Claverack Board are happy that the site is rehabilitated and being used but the Planning Board members were concerned that allowing the sale of firewood and propane tanks makes the site more of a convenience store than the approved use of a restaurant. Chairman Graziano stated that #11 section E line 11 refers to the storage of fuels in tanks and other fuels and that they are not allowed. Pat Prendergast stated that the law refers to industrial uses. Chris Post stated that in 2015 the applicant discussed signage and received approval for one sign on the building along with two entrance signs with the Subway logo on them. Pat Prendergast answered yes that is what the application was approved for but Ms. Condra has changed her mind and does not want the small entrance signs but rather a pole sign in addition to the sign on the building. Rob Fitzsimmons informed the Board that the small signs at the entrances were to route traffic and allows potential customers to see that the business existed at the site. Roger Case asked if the protocol has changed since the Extra Mart has been in business. Rob Fitzsimmons answered yes that the Extra Mart was pre-existing non-conforming signs and during a recent upgrade of the facility the business requested and applied for much larger signs but their request was denied and they were granted only upgrading of the signs but had to keep the size the same. Steven Melnyk agreed and stated that Extra Mart applied for a lot more signage than they actually received approval for. Pat Prendergast informed the Board that his client is seeking a pole sign mounted at 6 feet tall with a 2 foot by 4 foot sign on each side. Chris Post stated that the business has received approval for two small signs at each entrance. Mr. Prendergast stated that Ms. Condra feels that it is important for the business to have the pole sign along with the sign on the building to make the business successful. Chairman Graziano asked if someone wants to purchase propane tank they need to go inside the building then go outside to swap the tanks. George Schmitt informed the Board that there are already two businesses operating at the site one being the Subway sandwich shop the other the drinks and chips which are sold separately under a different business. George Schmitt continued that you have to pay for your sandwich at one register then the drink and chips at another. Rob Fitzsimmons informed the Board that this was mentioned at the Planning Board meeting. John Porto asked where the multi-use ends. George Schmitt stated that if a multi-use adds different uses they are required to return to the Planning Board for approvals of each additional use. Steven Melnyk stated that the Planning Board could refuse to grant additional uses. Pat Prendergast stated that nothing like a laundry mat is even being considered. John Porto stated that multi-use could open up for allowing many different uses. Pat Prendergast stated that a multi-use operation could only sell what the lot/parcel is sized for and only what the building could accommodate. Steven Melnyk stated that 10,000 square feet on the lot. Mr. Prendergast stated that the parcel is approximately 1 ½ acres in size. Rob Fitzsimmons informed the Board that the difficulty for the Planning Board is that the property was granted a use for a restaurant and they feel that selling propane tank exchange and firewood is not an accessory use for a restaurant and that it is more like a convenience store which is not allowed at this site. Pat Prendergast stated that the use is not of a restaurant or a convenience store but a multi-use facility. John Porto stated that the Extra Mart sells propane and firewood diagonally from this site. Chairman Graziano stated that there are two different zones. Steven Melnyk asked the distance from the apartment building from the propane tanks. Rob Fitzsimmons stated that setbacks are not an issue. Chairman Graziano stated that when a previous applicant came several years ago with the plans for a true multi-use building containing a restaurant, retail shops, offices along with apartments for rent he understood the term multi-use but having multiple uses within the same space seems like a swap shop and not multi-use as defined. Pat Prendergast stated that the intent of the Hamlet Business zone is to bring businesses to the hamlet. Pat Prendergast continued that these are the uses that his client is seeking for the site, restaurant, and propane tank exchange and firewood sale and if they want to add any other uses they will need to apply to the Planning Board for Site Plan approval. Mr. Prendergast continued that when he met with the Town of Claverack Building Inspector he thought that two signs were allowed so two signs should be allowed. Chairman Graziano informed Mr. Prendergast that in a normal multi-use business additional signs are allowed like at the Red Apple building where there are several different businesses each is allowed a sign by their doorways with one large business sign for the entire building. John Porto stated that most of the businesses in Claverack have multiple signs so he feels it is not a

big deal. Roger Case asked if the sign would be lit only during business hours or for 24 hours a day. Chairman Graziano stated that light issues were a concern with the Extra Mart signs and they were required to shut the lights off at the close of business each day. Pat Prendergast stated that having the lights on only during business hours could be a condition. Pat Prendergast informed the Board that the sign will have 15 watt goose neck lamps. Roger Case stated that he felt that the sign would not need to be lit after hours. Steven Melnyk stated that he didn't have an issue with the sign on the building along with the pole sign. Chris Post stated that the site has already received an approval for two small signs at each entrance. George Schmitt suggested that the applicant consider removing the two small signs to be replaced with the pole sign. Roger Case asked if the lights will be set to timers. Steven Melnyk stated that he is unsure that selling propane tanks and firewood are ancillary uses for the Subway use and he cannot wrap his head around someone stopping to buy a sandwich and needing firewood or propane. Pat Prendergast stated that a multi-use building offers a variety of things in one building like offices, retail sales along with residential. Chairman Graziano stated that he supports business and the original application for Claverack Corners which was reviewed several years ago was a true multi-use with offices, retail shops, restaurant and apartments all that have separate entrances but are in the same building. Steven Melnyk asked if a snack shop were added it would be another use but use the same entrance. Pat Prendergast stated that it is retail and food. Chris Post stated that he had no problem with ancillary sales of propane and firewood. Chairman Graziano stated that Extra Mart is a convenience store that also sells food but the Subway shop is zoned as a restaurant. Steven Melnyk informed Mr. Prendergast that the site of the Subway is not zoned for a convenience store. Rob Fitzsimmons informed Mr. Prendergast that interpretations require a public hearing in the Town of Claverack. Rob Fitzsimmons continued that from the discussion it appears that the Board is ok with the signage but is having a problem with the additional uses as a multi-use commercial. Chris Post stated that he is not in favor of the additional signage because the applicant has already received approval for additional signage. Rob Fitzsimmons informed the Board that they need to determine whether the ancillary sales of propane and firewood can be considered as a multi-use commercial addition to the Subway shop. Steven Melnyk asked how much more revenue does the sale of firewood and propane add to the business. Pat Prendergast stated that he did not have the figures. Rob Fitzsimmons informed the Board and Mr. Prendergast that if Ms. Concra plans to add any other uses to the building like an ice cream shop or to sell anything else she will be required to apply for a new Site Plan Review. Rob Fitzsimmons then reviewed the TOC Zoning Code definition of a convenience store which states and establishment where food items and household goods are sold along with the sale of gasoline. Pat Prendergast stated that his client is not selling gasoline therefore it is not a convenience store. George Schmitt stated that convenience stores typically sell cigarettes, oil, food, propane and other multiple items where people going on a trip could purchase items. George Schmitt asked where the line of multi-use vs convenience store is. Pat Prendergast stated that gasoline is the difference. Chairman Graziano stated that household items and firewood are not necessarily items that go along with a restaurant use as Subway. Rob Fitzsimmons stated that he has seen this argument go the other way. Chairman Graziano stated that he wants to see the Subway business successful but does not want it to turn into a convenience store nor does he feel that the Zoning Board of Appeals should dictate to a business what they can or can't do. Pat Prendergast stated that the Subway has only two uses. Chairman Graziano continued that the sign issue would have the contingency that the two smaller previously approved signs would be no longer allowed if the pole sign were installed. Rob Fitzsimmons suggested that the Zoning Board of Appeals set the application for public hearing at the April 26<sup>th</sup> meeting.

Motion to adjourn was made by John Porto with a second from Chris Post. All members were in favor. Motion carried. Meeting adjourned at 8:25 p.m.

Respectfully submitted,

Jodi Keyser, Secretary