

Approved July 22, 2020

Town of Claverack  
Zoning Board of Appeals  
MINUTES  
February 26, 2020

Chairman David Graziano called the February 26, 2020 meeting of the Town of Claverack Zoning Board of Appeals meeting to order at 7:30 p.m.

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

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

Absent with regrets: Roger Case and John Porto

Board members reviewed the minutes of the January 22, 2019 meeting.

Motion to approve the minutes of January 22, 2020 was made by Chris Post with a second from Steven Melnyk.

All members were in favor. Motion carried

**CONTINUING APPLICATIONS for 2/26/2020**  
**NONE**

**NEW APPLICATIONS FOR 2/26/20**

**Farhan Shaikh dba Yorkshire Motel Interpretation of local law: Tax Map #(SBL) 132 . – 1 – 19. Located at 490 NYS Rte. 23. Interpretation of Town of Claverack Local Law # 2 of 2019 Hotel and Motel Registered Sex Offender Occupancy License Law.**

Mr. Kleinbaum was present to represent the applicant. Chairman Graziano asked Mr. Kleinbaum that the application is missing a denial from the TOC CEO. Mr. Kleinbaum answered that his client received a letter from Jay Trapp, Town of Claverack Zoning Enforcement Officer that the business was not in compliance with the TOC law. Mr. Kleinbaum continued that the TOC law has aspects of Zoning but it is under the Town Law. Mr. Kleinbaum continued that he does not have a specific denial only the letter that states that the business is out of compliance with the Town Law. Rob Fitzsimmons informed the Zoning Board members that the applicant does not need a denial for an interpretation. Rob Fitzsimmons continued that the applicant is seeking that the ZBA interpret the new law as it pertains to the Zoning of the business and if the law is a zoning issue. Mr. Kleinbaum informed the Board that he is seeking the interpretation because he doesn't want to take the case to court only for the judge to say he skipped the issue with the TOC Zoning Board of Appeals since it is a zoning issue. Rob Fitzsimmons informed the ZBA members that the new law was set up because of the over utilization of housing sex offenders at the Yorkshire Motel so the Town of Claverack passed a law that limits the numbers of sexual offenders that could be registered at one site. Rob Fitzsimmons continued that the Town of Claverack Town Board members wrote the new law using the Town of Schodack law to set the new town code for housing sex offenders. Rob Fitzsimmons informed the Board that after the TOC Town Board approved the new law Jay Trapp sent letters out to all of the motels/hotels within the Town of Claverack. Rob Fitzsimmons informed the Board that the new law requires any motel/hotel that houses sex offenders to register with the Town of Claverack, and then they need to apply for the limit that they would be allowed to hold at one time. Rob Fitzsimmons continued that the Town of Claverack sex offender law is based on a point system meaning that there is a formula that takes the number of rooms in the facility with the level of the offender i.e. 1,2,3,4 and they are only allowed to hold to a maximum of 5 points at any given time. Rob Fitzsimmons continued that the Yorkshire could only hold one level (1) offender and one level (4) offender because that equals the 5 points. Rob Fitzsimmons continued that the law requires a yearly license fee, a yearly review of the site and that the site must display a placard in the hallway or highly visible area as the front desk to notify other patrons that the business houses sex offenders. Rob Fitzsimmons informed the Board that the Town of Claverack does not want the few hotels to become over run with housing for sex offenders only. Rob Fitzsimmons continued that the Town of Claverack was receiving complaints from neighbors of the Yorkshire Motel that sex offenders were meandering and wandering around the neighborhood during the day and were interacting with neighborhood children and others and was making the neighbors very unhappy. Chairman

Graziano stated that the Zoning Board of Appeals does not control the use of the building and he referenced Zoning Law 18.15.1.

Mr. Kleinbaum informed the ZBA that his client does not agree with the law and has filed for an interpretation of the town of Claverack local law that requires registration for housing sex offenders. Mr. Kleinbaum continued that the Town of Claverack CEO has asked that the owner apply for the registration in accordance with the law. Mr. Kleinbaum continued that his client disagrees with the law and his attorney has submitted a brief with two main arguments, that the New York Court of Appeals has determined a case that states local municipalities cannot regulate sex offender housing due to the state's implied preemption of the field of law; and that the law is ex post factor, meaning the Yorkshire Motel should be "grandfathered" making the law inapplicable. Rob Fitzsimmons explained to the board that the first issue is whether the law is a zoning law or not that the ZBA can interpret. Mr. Kleinbaum stated that he agrees that the law may not be deemed a zoning law subject to ZBA consideration but does not want to have any subsequent legal challenge to the law be dismissed due the fact that a court could rule the law regulates the use of land and should have been considered by the Town of Claverack ZBA. Rob Fitzsimmons stated the Town of Claverack position is that the law does not exclude sex offender housing but only limits concentrations of sex offenders by a registry and point system. Rob Fitzsimmons also explained that ex post factor is a federal constitutional theory and he is not sure it is applicable here, but that is an issue for further research.

Town of Claverack ZBA members expressed the opinion that they do not believe this is a law they can interpret, but will accept the application and schedule it for public hearing for the next meeting. Application is set for public hearing for March 25, 2020.

Motion to adjourn the February 26, 2020 meeting was made by Steven Melnyk with a second from Chris Post. All members were in favor. Motion accepted. Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Jodi Keyser, Secretary