

APPROVED 6/21/23

Town of Claverack
Zoning Board of Appeals
MINUTES
May 24, 2023

Chairman David Graziano called the May 24, 2023 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

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

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

Review the minutes of the April 26, 2023 meeting. Chairman Graziano thanked Rich Michael for attending the April meeting to fill in for Jodi Keyser. Chairman Graziano requested a couple of minor corrections to the minutes.

Motion to approve the Minutes of April 26, 2023 with minor corrections was made by Chris Post with a second from John Porto. All members were in favor. Motion carried.

Susan Levy Area Variance: Tax Map #133 . 1 – 34 Located at 44 Green Acres Rd. Area Variance of 17-foot for side yard setback to construct an addition and porch. Side yard setback in RC zone is 50-foot.

John Campeta was present for the application. Chairman Graziano stated that the Board requested a survey of the property which was received. Chairman Graziano continued that the deeds that were submitted with the application do not match the survey maps. Chairman Graziano asked where the deeds were obtained. Dan Russell was present for another application and was also the surveyor for this application. Mr. Russell stated that he found one deed in just Ms. Levy's name and one in both Levy and Carlin. Chairman Graziano stated that he looked for the deed and found a bunch under Levy and a bunch under Carlin.

Motion to accept application as complete was made by Steven Melnyk with a second from August Abatecola. All members were in favor. Motion carried.

Chairman Graziano continued that after reviewing the new maps and deeds there is the need to have two area variances one of 26.3 feet and the other of 45.5 feet. Chairman Graziano stated that he has never seen a boundary line go through the middle of a building. Chairman Graziano asked Mr. Campeta if he has posted the public hearing sign. Mr. Campeta answered yes. Mr. Campeta reviewed the project for the Board members. Mr. Campeta stated that his client is removing an existing porch, constructing an addition with a new screened in porch. Mr. Campeta continued that his client is a chef from Connecticut.

Chairman David Graziano opened the public hearing at 7:38 p.m. No comments were received. Chairman Graziano closed the public hearing at 7:39 p.m.

Chairman Graziano read the 5 criteria required for an Area Variance finding that the request of the Area Variances are substantial and they are self-created but these issues will not impact the outcome. Rob Fitzsimmons reminded the Board that Area Variances are exempt from SEQRA review.

Motion to grant the Area Variances of 45.5 feet and 26.3 feet was made by John Porto with a second from August Abatecola. All members were in favor. Motion carried.

Maps were stamped and signed. Fees of \$5.04 were paid for legal notice mailing.

Mossman, Malia, Trustee Joan Preusser Living Trust No. 1 of 2014 Area Variance: Tax Map #133 . – 2 – 58 Located at 44 Preusser Rd. Area Variance of 2.453 acres within the 5-acre zone.

Dan Russell, Malia Mossman were present for the application. Chairman Graziano asked the relationship between Kimberly Preusser and Malia Mossman that was used as the notary on the family sign off form. Ms. Preusser answered that Kim Preusser is married to her 3rd cousin and not a close relative but was used because she works at the Farm Credit office. Mr. Russell informed the Board that the application is seeking to have a Boundary Line Adjustment to take the shared roadway off of the Trust property and add it to the Mossman's property. Mr. Russell continued that the piece being requested is a shared roadway that is currently included in the property owned by the trust and it would make more sense to have the shared driveway go with the house that uses it to access their house. Mr. Russell continued that the property consists of parcels 4.6 acres and 3.4 acres within the 5-acre zone and were non-conforming pre-existing lots. Mr. Russell is proposing to move 2.02 acres from the 4.6-acre parcel to join with the 3.4 acre parcel creating a conforming parcel of 5.47 and a non-conforming parcel of 2.547-acres. Mr. Russell continued that the Area Variance is to make a non-conforming pre-existing parcel more non-conforming by 2.453-acre Area Variance. Chairman Graziano requested Mr. Russell submit the answers to the 5 Criteria for an Area Variance. Mr. Russell stated that he thought he had but will submit as soon as tomorrow. Ms. Mossman is the trustee of the trust and informed the Board that the driveway is used by her brother Chris Preusser and makes more sense to have the driveway added to his property and not the parents parcel since he needs to use it. Ms. Mossman continued that this has been in the process for several years and the family would like to eventually sell the smaller parcel but wouldn't do without cutting the driveway off as it does not serve their parent's parcel. Mr. Russell stated that deeds will be changed to put the driveway parcel on to Chris Preusser's parcel. Chairman Graziano asked if this is to make Parcel A more viable to sell. Mr. Russell answered yes because the driveway does not serve any purpose to their parent's parcel. Board members were fine with the application.

Motion to set public hearing on 6/28 was made by Chris Post with a second from August Abatecola. All members were in favor. Motion carried.

Mr. Russell will submit the answers to the 5 criteria questions.

Klocke Estate Holdings LLC Interpretation: Tax Map #(SBL) ????????????(not provided)

Zoning Code Interpretation to amend the approved Site Plan/Special Exception use of an approved tasting room into a full-service restaurant with table service. Code Clarification is requested to determine whether the approved tasting room use change to a full-service restaurant with table service falls under the definition of "facilities" of an agro-tourism use as defined in Town of Claverack Zoning Code §2.16 Agricultural Tourism.

John Frishkopff and Brandee Nelson were present for the application. Rob Fitzsimmons informed the Board that he has been in contact with the applicant and to review the project was approved for a distillery with a tasting room. Rob Fitzsimmons continued that NYS Liquor Authority requires that all distilleries, breweries and bars are required to serve some sort of food. Fitzsimmons continued that the applicant visited the Town of Claverack Building Department who requested an interpretation from the Zoning Board of Appeals. Rob Fitzsimmons continued that this is fully approved as a farm distillery but are asking for a full-service restaurant in the Rural Agricultural zone which if the only use would not be

permitted. Rob Fitzsimmons continued that the applicant is seeking the definition of Agri-tourism that this would fall under this definition. Rob Fitzsimmons continued that Cooper's Daughter distillery has food trucks and Golden Harvest farm distillery has a BBQ. Brandee Nelson stated that the Town of Claverack Zoning Code defines Agri-tourism as Agricultural uses, such as farms, ranches, and vineyards that, through promotion and advertising, facilities, and activities seek to attract visitors, guests, and vacationers. Agricultural tourism includes but is not limited to dude ranches, u-pick operations, and hay mazes. Ms. Nelson asked the Board if a restaurant within a farm distillery be considered a facility under the Agricultural Tourism use. Ms. Nelson continued that the distillery was approved with a full commercial kitchen because the Town of Claverack Planning Board was aware that the operation would be used for food preparation and service in conjunction with the Farm distillery. Ms. Nelson continued that the Town of Claverack Planning Board also fully approved the site plan with 88 seats for tasting and food. Ms. Nelson continued that her client is seeking an interpretation of facilities in respect to the Agricultural Tourism use. Steven Melnyk asked the size of the tasting room. Ms. Nelson answered 88 seat capacity. Chairman Graziano had concerns with the loosely defined in the Zoning Code "includes but not limited to". Mr. Frishkopf stated that it was always his intention to open a full-service restaurant. Chairman Graziano asked why the change to become a restaurant. Mr. Frishkopf explained that since the TOC Planning Board approved the Site Plan with 88 seats, full commercial kitchen he thought that he was approved to do whatever he wanted as far as food but when he visited the Town Building Department he was told different and was instructed to seek clarification of Agri-tourism. Chairman Graziano stated that his concern is the breakdown as per the NYS Liquor Authority from tavern food to a full-service restaurant is a big difference which would still require a use variance which are very difficult to obtain. Rob Fitzsimmons stated that this is a gray area because the NYS Liquor Authority requires that some level of food is provided within a tasting facility but at what point do cheese and crackers become more. Rob Fitzsimmons continued that this use is as Klocke Farm Distillery with a restaurant and not Klocke Restaurant with a distillery and tasting room but it was still not approved to be a full-service restaurant either. Steven Melnyk stated that it is a stretch and he understands the food requirement for the tasting room but with that being said he thinks of the food as being tavern type sandwiches and snacks like wings and such. Rob Fitzsimmons stated that the Town of Claverack cannot regulate the types of foods. Steven Melnyk stated that if this was an application for just a restaurant it would not be allowed on this site so paring it with a distillery doesn't make it different. Rob Fitzsimmons stated correct but the applicant is seeking a clarification of the Agri-Tourism use definition as a facility working in conjunction with the distillery as one use. Chairman Graziano stated that he understands the requirement set forth a few years ago by then Governor Cuomo that required taverns and bars to have food items available instead of just having a place for people to only consume alcohol. Brandee Nelson stated that her client is seeking interpretation of the Town of Claverack Zoning Code definition of Agri-tourism as it relates to facilities. Chairman Graziano stated that if this is a tasting room to taste the different brandy and wine that are produced on the property where you could also have a nice meal, he is concerned that this would then evolve into events on the weekend that don't have anything to do with a distillery such as bridal parties, weddings, bands, etc. Ms. Nelson stated that this property is 182 acres and Mr. Frishkopf has invested 5 years in creating and planting grapes and apples working toward 55 acres of orchards. Ms. Nelson continued that Mr. Frishkopf started clearing the property in 2019 and has spent significant amounts of money in drainage, buildings and equipment. Mr. Frishkopf informed the Board that he had the first grape harvest in the fall of 2022 and will have the orchard at its 4th year in 2023 with hope that the apples will be producing soon but until then they purchase apples from the Bartolotta farm. Mr. Frishkopf stated that Mr. Bartolotta has been helping to create the orchard with his knowledge of the industry. Ms. Nelson stated that her client has spent the focus of his time on getting the agricultural aspects of the

property up to speed as well as working on the winery/distillery buildings. Ms. Nelson continued that the property consists of a distillery on top of the hill and a long driveway that gives guests the experience of the agriculture to proceed to the distillery where they can enjoy the tasting room with the magnificent views of the Catskill mountains. Mr. Frishkopf stated that this is an earth to glass operation with bringing a sense of place in the orchard and vineyard to enjoying the final product. Chairman Graziano asked for the business plan and model of the use because he is worried that the public hearing will be contentious with neighbors that would want to see the planned use in black and white details. Mr. Frishkopf stated that the business model is to bring people to the distillery. Chairman Graziano stated that the business has 88 tables which would bring the question of the number of meals per day and money generated by the number of meals. Mr. Frishkopf stated that his plan is to bring people to the distillery with the prospect that you could enjoy a nice dinner while enjoying the products of the distillery that would then sell bottles of brandy and wine. Mr. Frishkopf continued that the distillery needs more than just cheese and crackers to bring people to taste and then purchase. Chairman Graziano asked if the plan is to hold events. Ms. Nelson answered that this is not an events venue per say but any farm in the area could hold events. Mr. Frishkopf stated that most people would want weddings and other events on the weekends which would cut into the bottom line and he is not seeking for the property to become a wedding venue but would hold classes and educational events on growing grapes, distillery process, etc. Mr. Frishkopf continued that he would seek to hold non noise events such as rehearsal dinners and such. Rob Fitzsimmons stated that this is a fine line as with the Churchtown Dairy holding events that are not a part of the original use such as weddings, star gazing, etc. Rob Fitzsimmons continued that holding bridal showers does not fit with the intended use of a distillery. Chris Post asked if the restaurant holds 88 tables or 88 seats. Mr. Frishkopf answered 88 seats. George Schmitt stated that Ag & Markets guidelines requires 50% of the consumable products be produced on the farm use. Brandee Nelson stated that 50% of the food sourced would be outside of the farm because the farm does not grow or produce the needed items but they have relationships with several local farms that they can source from. Ms. Nelson continued that going outside of Ag & Markets the use is not confined to this rule. Chairman Graziano stated that the interpretation is then only based on the Town of Claverack Zoning Codes and not bound by Ag & Markets. George Schmitt stated that this frees the use from those limitations. George Schmitt continued that he has a concern that patrons could just make a reservation to go for dinner and not forced to partake in the distillery at all which defeats the use of the facility. George Schmitt continued that the restaurant should be part of the distillery experience and not a separate entity. Ms. Nelson stated that people would be required to visit the distillery not just the restaurant. George Schmitt asked if the restaurant operates separate from the distillery by someone making a reservation at 8:00 pm with no required tour or tasting just to eat dinner. Mr. Frishkopf stated that he will not turn anyone away. Ms. Nelson stated that the restaurant and tasting room are the same space. George Schmitt asked about parking is adequate. Steven Melnyk stated that in his opinion constitutes a stand-alone restaurant that would not be permitted use in this area. Rob Fitzsimmons stated that several of the local distilleries and breweries have restaurant types of situations that are joined with the primary use of a distillery such as Golden Harvest Farm that has a distillery, smokehouse and now a BBQ that people can enjoy and they can have a tasting or not. Rob Fitzsimmons continued that it is up to the ZBA to determine if this fits into the Town of Claverack Zoning Code. Chairman Graziano stated that if the applicant were going for an additional use under Ag & Markets then the Town would have to deal with the use but if not operating under Ag & Markets then it would be a business use that is not permitted in that area. Brandee Nelson asked what the significance of Ag & Markets would have on the interpretation. Chairman Graziano stated that the application is asking the ZBA to make an interpretation of the definition of Agricultural Tourism for a use that is not permitted in this zone and under Ag & Markets there are clear guidelines

that the distillery is the primary use of the site and not the restaurant. Chairman Graziano continued that he is concerned and would imagine that the neighbors would have concerns that there would be large events, bands, noise especially on weekends that would greatly impact their properties. Rob Fitzsimmons stated that the applicant would not need to seek approval from Ag & Markets for a food service operation. Rob Fitzsimmons continued that the restaurant is an accessory use to the distillery. George Schmitt stated that a restaurant would not be allowed under regular circumstances so what separates the two. Rob Fitzsimmons answered that if an Olive Garden were to come to the Town of Claverack seeking a permit to build a restaurant at this site then they would be denied but this applicant is seeking a restaurant as an accessory to the prior approved distillery. George Schmitt asked what is there to keep the use from turning into a full restaurant instead of the distillery because the use would stay with the property. Mr. Frishkopf stated that the Town of Claverack Planning Board gave full approval to the distillery and tasting room with the knowledge that there would be a full commercial kitchen, seating for 88 guests at 25 tables which is not a large restaurant at all. Mr. Frishkopf continued that he understands that the Town of Claverack also has an events law that would limit the number of events, types of events and that there is an application process to hold events so that he would not be able to have something every weekend unlike under Ag & Markets that would allow for events at the distillery. George Schmitt stated that if the use is ancillary to the primary use the Board members need to remember that the use stays with the property and if it changes hands then anyone could operate a restaurant without a distillery. Chairman Graziano stated that if the applicant goes outside of Ag & Markets they only need to deal with the Town of Claverack which is good guidance from Rob. Motion to accept the application was made by Chris Post with a second from John Porto. All members were in favor. Motion carried.

Steven Melnyk asked if the plan was to always have a bar at the site. Mr. Frishkopf answered yes always and it was approved by the Town of Claverack Planning Board. Mr. Frishkopf continued that it was always their intention to have some type of food which is a requirement. Steven Melnyk stated that he would like to see a business plan. Rob Fitzsimmons suggested that the applicant provide the ZBA with a narrative since the application lacks information. Steven Melnyk stated that if he understands this correctly this was approved as a farm distillery with a tasting room and the applicant wants to add food service. Chairman Graziano stated that he would request a business plan narrative to better understand and feel more comfortable with additional information. Steven Melnyk stated that he knew that the applicant would have a tasting room and now a restaurant. Mr. Frishkopf stated that he always knew that he wanted to serve food and should have said a restaurant in the first place and he thought that a restaurant would be more appealing and would interest more people to visit the distillery instead of only having a tasting room. Mr. Frishkopf continued that his whole objective is to entice more people to the facility and a restaurant would generate more money and more visitors. Steven Melnyk stated that he wants to see guidelines and what the progress of the operation is at this time. Mr. Frishkopf answered that the stills are in process of being built with an estimated completion of August, apples and grapes are planted. Ms. Nelson stated that she brought in full site plans for the Board members to review with 100s of pages of information. Mr. Frishkopf stated that a narrative would be doable.

Motion to accept the application as incomplete and to set public hearing for June 28, 2023 pending list of abutters. Ms. Nelson stated that there must have been a miscommunication and will submit all of the required materials Ag. Statement, abutters with addresses, etc.

Motion to adjourn the meeting was made by John Porto with a second from August Abatecola. All members were in favor. Motion carried. Meeting adjourned at 9:15 p.m.

Respectfully submitted,

Jodi Keyser, secretary