

APPROVED July 27, 2016

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544
Minutes: June 29, 2016

Acting Chairman David Graziano called the June 29, 2016 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m. followed by the Pledge of Allegiance. Members in attendance were: Acting Chairman David Graziano, Steven Melnyk, John Porto, Chris Post, Oliver Milot, Kim Keil, attorney; Rob Fitzsimmons, engineer; George Schmitt and secretary; Jodi Keyser.

Correspondence: Email from attorney Michael Howard regarding the Thomas application.

Board members reviewed the minutes of the May 25, 2016 meeting. Motion to approve the May 25, 2016 minutes was made by Kim Keil with a second from Steven Melnyk. All members were in favor. Motion carried.

CONTINUING APPLICATIONS FOR June 29, 2016:

Thomas, John Use Variance: Tax Map #(SBL) 101 . – 2 – 27 . 110 Located at 632 Route 9-H. Applicant is seeking a Use Variance for the construction of a dog kennel in the Rural Agricultural Zone.

Secretary Jodi Keyser submitted an email from Michael Howard Esq. asking for continuance of his client's application pending the outcome of the Town Board meeting to decide whether to change a parcel from Rural Residential into Highway Commercial to allow for the boarding kennel proposed by Mr. Thomas.

Seserman, Michael Area Variance: Tax Map # 112 . 02 – 02 – 65 Located at 63 Church St. Mellenville. Area Variance to install an 8 foot high deer fence around most of the property but the fence is within 10 feet of the property line.

Mr. Seserman and Ms. Gitterman were present for the meeting. Mr. Seserman explained to the Board that they are seeking to erect an 8 foot deer fence to protect their plants and trees from deer. Mr. Seserman continued that he purchased the property 2 years ago and has tried to beautify the property with plants and fruit trees but the deer are destroying everything that is planted. Mr. Seserman informed the Board members that a former owner used to feed the deer which has attracted them to the neighborhood. Mr. Seserman described his property as a "Deer Highway" and he has tried several different methods to repel the deer but was informed by Cornell Cooperative Extension that an 8 foot deer fence would be the best option. Mr. Seserman informed the Board that he only needs variance on three sides of his property because the distance in the front is fine. Mr. Seserman stated that he wants to enhance the neighborhood and his property so he will install an 8 foot wire fence with cedar posts. Mr. Seserman informed the Board members that his property is unique because it is surrounded on three sides by wooded property. Mr. Seserman continued that his plan is to install gates into the fence to allow for the neighbors to access the property. Mr. Seserman also stated that the fence would be beneficial for the community to keep deer from entering onto Church Street and causing an accident. Oliver Milot stated that he was shown photos of the property at the last meeting but when he drives past the property now the fence is already there. Ms. Gitterman informed the Board that they have installed the fence only in the front of the property where they did not need a variance. Steven

Melnyk informed the applicant that they should not have installed any of the fence because they are not guaranteed the variance. Acting Chairman David Graziano read the law pertaining to an area variance and that in his opinion this would set a precedent for others seeking to install a fence. Acting Chairman Graziano informed the Board that he researched how far and high deer can jump and found out that deer can jump high but not for a long distance. Acting Chairman Graziano continued that his research indicated that shorter fencing installed at an angle is the most effective way to install a fence to deter deer. Mr. Seserman informed the Board that he has already purchased the 8 foot fence and it would be too expensive now to install shorter fencing. Mr. Seserman continued that time is of the essence to install the fence because the deer have destroyed three of his fruit trees just this week.. Mr. Seserman informed the Board that this hardship was not self-created because the former owners have been feeding the deer for several years prior to him. Acting Chairman David Graziano stated that deer will change their habits. Mr. Seserman stated that the only option is to install the 8 foot fencing. Ms. Gitterman stated that many farmers have installed the 8 foot fence to protect their fruit trees because it works. Steven Melnyk informed the applicants that the fruit farmers install the fencing to protect their livelihood and they need the fruit to make money and it is different from their situation. Acting Chairman David Graziano informed the applicants that if they installed a 6 foot fence then they would not need the variance. Mr. Seserman stated that he thought that the area variance was for the setbacks from the neighboring properties. After some research Rob Fitzsimmons informed the applicant and the Board members that the area variance is for the height of the fence not setbacks because the fence can be installed up to their property line but the Town only allows for a 6 foot fence. George Schmitt informed the applicant that his family lives in a very rural area and have always used a 6 foot fence to keep the deer out of their gardens. Mr. Schmitt continued that his brothers are in the contracting business and they also install 6 foot fencing because it works. John Porto asked if anyone is still feeding the deer. Mr. Seserman stated that he is not aware of any of his neighbors feeding the deer. Acting Chairman Graziano informed the applicant that he has a neighbor that had a deer problem with his garden so he installed a 4 foot fence and this has stopped the deer. Steven Melnyk stated that a 6 foot fence at a 45 degree angle could be the answer. Acting Chairman Graziano stated that deer are capable of jumping over an 8 foot fence but have difficulty jumping over shorter fencing that is installed at an angle because of the distance.

Acting Chairman Graziano opened the meeting to the public hearing at 8:00 p.m.

Robert McKay stated that he sympathizes with Mr. Seserman and Ms. Gitterman but he is concerned for his property. Mr. McKay continued that if the applicants are allowed to install an 8 foot fence to deter the deer population then the deer will go to everyone. Mr. McKay continued that he supports Mr. Seserman and Ms. Gitterman but he is concerned about the closeness of the fence to his property. Mr. McKay suggested that the liquid deer repellent works good.

Jay Brousseau owner of the surrounding wooded property to the north and west informed the Board that he met with Mr. Seserman. Mr. Brousseau stated that he does not understand the meaning of high pressure deer population because there are deer all over the area. Mr. Brousseau continued that an 8 foot fence that is installed 2 feet from the property line might deter the deer from the garden but they will just go elsewhere. Mr. Brousseau did want the Board members to know that the fence has already been installed. Mr. Brousseau continued that he does not have a problem with the fence but is concerned that the variance will be attached to the property and feels that there are other alternatives to the problem.

Kerry Brousseau also owner of the property to the north and west of the Seserman property stated that if fencing is the answer then why doesn't everyone install a fence.

Jay Brousseau asked the Board for the actual setback of the fence from the adjoining properties. Rob Fitzsimmons answered that according to the Zoning Law a fence can be installed right up to the property line. Rob Fitzsimmons informed the Board and audience that the issue is not with

the setback from the property line but the area variance is for the height of the fence itself because the Zoning Law allows for a 6 foot fence and the applicant is seeking an 8 foot fence. Mr. Seserman then asked if he installs a 6 foot fence then he would not need an area variance? Rob Fitzsimmons informed Mr. Seserman to check with the Building Department. Mr. Seserman asked the setback for a structure. Rob Fitzsimmons answers that this is a question for the Building Department also.

William Hamm stated that the fence is only 1 to 1 ½ feet away from his shed and he is concerned that there are three different property lines drawn up with fishing line, stakes and masonry line which differ by 6 to 8 feet. Mr. Hamm stated that he did not care about the fence but does not want the fence too close to his shed. Mr. Hamm continued that he is requesting that the Board require the applicant to set a specific distance from his shed for the fence.

Jay Brousseau stated that he appreciates protecting for fruit trees but this is not an agricultural venture for Mr. Seserman.

Mr. Seserman informed the Board that he contracted Matt Bowe prior to purchasing the fence and Mr. Bowe marked the property line. Mr. Seserman continued that he has tried to do everything right and make the property and the surrounding community better and to be neighborly in the process.

Acting Chairman Graziano then closed the public hearing at 8:15 p.m.

Acting Chairman David Graziano stated that he has an issue with the 8 foot height of the fence and this might be a subject to discuss with the Town Board. Acting Chairman Graziano continued that he is concerned that granting this area variance will create a precedence because an area variance is unlike a use variance and is strictly up to the discretion of the Zoning Board members. Oliver Milot asked the applicant what makes his property so unique that they are different from every other property in the neighborhood. Acting Chairman Graziano then read the criteria for granting an area variance and stated that his opinion is that the fence will just shift the deer population to another area of the neighborhood. Chris Post stated that any fence even a 6 foot fence will shift the deer population. Mr. Seserman stated that he has had 3 of his fruit trees demolished by deer in the last 3 days. John Porto stated that a 6 foot fence is adequate as long as the neighbors are not feeding the deer. Steven Melnyk stated that the applicant has already purchased the 8 foot fencing and has installed part of the fence. Rob Fitzsimmons informed the Board that the applicant has the right to a 6 foot fence of any type such as stockade, picket, solid, etc. but he is asking for an area variance of two feet above the allowed height for a wire deer fence which the Board can specify in the motion. Rob Fitzsimmons continued that he heard from the public hearing that the neighbors are supportive of the fence but concerned that the deer will now become an issue for their properties. Acting Chairman Graziano read the criteria for granting an area variance for the Board and polled the Board members. All of the Board members were in favor with Acting Chairman Graziano against.

Motion to make a negative declaration with regard to SEQRA was made by Steven Melnyk with a second from Oliver Milot. All members were in favor. Motion carried.

Motion to grant an area variance for an 8 foot open mesh/wire type of deer fence as proposed in the application was made by John Porto with a second from Kim Keil. All members were in favor. Motion carried.

Mr. Seserman paid his mailing fee.

Halstead, Gail Use Variance: Tax Map # 133 . – 2 – 20 Located at Rte. 23 and County Rte. 11 Craryville. Use Variance for retail sales business in the Hamlet Residential Zone.

Ms. Halstead was a no show and no contact for the meeting which is considered strike #1.

NEW APPLICATIONS FOR June 29, 2016:

No new applications received.

INFORMAL:

Victoria Masters informed the Board that she is interested in purchasing a 51 acre parcel located at 195 Stone Mill Rd. Ms. Masters continued that the property is ½ wooded and ½ clear open space. Ms. Masters informed the Board that she is interested in starting a type of farming operation which would consist of building a farm with several small cabins for weekend rental to guests. Ms. Masters stated that the idea is to create a farm operation with educational sessions taught about farming. Ms. Masters proposes to also have small animals i.e. chickens, sheep, goats etc. Nothing big like cows or horses. Ms. Masters continued that this is a commercial interest and a for profit business for her. Rob Fitzsimmons informed Ms. Masters that this is permitted on in the zone but that she would need to be careful on how to proceed not making it more commercial than agricultural. Rob Fitzsimmons informed the applicant that this proposal would require a Site Plan and suggested that she hire an engineer to draw up specifics and then make an appointment with the Town of Claverack Building Department to begin the process. Rob Fitzsimmons asked if the purchase was dependant on the approval. Ms. Masters answered yes. Rob Fitzsimmons informed Ms. Masters that she will need detailed water, septic, and curb cut details in the site plan and meet with Stan Koloski..

OTHER BUSINESS:

Secretary Jodi Keyser informed the Board members that she received a phone call from Chairman Frank Clegg informing her of his resignation.

Kim Keil also informed the Board members that tonight's meeting is her last meeting since she has handed in her resignation. Mrs. Keil thanked the Board members and asked that they remember to be compassionate to the applicants to help them through the process.

Motion to adjourn the meeting was made by Chris Post with a second from Kim Keil. All members were in favor. Motion carried. Meeting adjourned at 8:15 p.m.

Respectfully submitted,
Jodi Keyser, Secretary