

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544
Minutes: May 25, 2016

Acting Chairman David Graziano called the May 25, 2016 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 P.M.

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

Members in attendance were: Acting Chairman David Graziano, John Porto, Steven Melnyk, Kim Keil, Oliver Milot, Chris Post, engineer; George Schmitt, attorney; Rob Fitzsimmons and secretary; Jodi Keyser.

Absent with regrets: Chairman Frank Clegg

Correspondence: None

Zoning Board of Appeals members reviewed the minutes of the April 27, 2016 meeting.

Motion to approve the minutes of April 27, 2016 with minor correction was made by Kim Keil with a second from Steven Melnyk. All members were in favor. Motion carried.

CONTINUING APPLICATIONS FOR May 25, 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.

No applicant or contact from applicant or representative. 2nd strike as per Zoning Board of Appeals.

Martin, Tracy & Dana Area Variance: Tax Map #131 . – 2 – 13 Located at 261 Schoolhouse Rd. Area Variance for 1,426 square feet above the allowed 1,600 square feet to renovate a barn to use as a caretaker/owner residence.

Chad Lindberg of Taconic Engineering was present for the application. Mr. Lindberg submitted a letter of agent from Mr. & Mrs. Martin. Acting Chairman David Graziano read the original application concern of the Planning Board requesting that the 2600 square feet be clarified because different sizes were mentioned. Mr. Lindberg explained that each floor of the barn consists of 1100 square feet with a 600 square foot porch equals 2,800 square feet. Chris Post asked if the architectural rendering has dimensions. Mr. Lundberg reviewed the renderings. Acting Chairman David Graziano informed Mr. Lundberg that the Zoning Board of Appeals needs an exact dimension to determine an exact size for the variance. Rob Fitzsimmons informed the ZBA members that the Planning Board was against the porch placement on the Loomis Creek side of the house so the applicant hearing this concern moved the porch to the opposite side of the barn. Rob Fitzsimmons reviewed the Planning Board Site Plan application and found that the dimensions of the project are different from the Zoning Board of Appeals application. Secretary Jodi Keyser submitted an email from Dana Martin stating the exact dimensions as per the architect working on the project. Mrs. Martin's email stated that they are seeking a 1,426 square foot area variance. Acting Chairman Graziano asked Mr. Lundberg if the porch was in fact moved on the plan to the opposite side of the barn away from the stream. Mr. Lundberg answered yes. Rob Fitzsimmons informed the ZBA that there was discussion at the Planning Board that informed the applicants if they constructed a patio or terrace then the size would not be added to the square footage of the renovation but Mrs. Martin wanted a porch so the size of the porch is required to be part of the overall square footage. Chad Lundberg informed the Board that he has performed a soil evaluation and has submitted a septic design according to the soil evaluation to the Columbia County Department of Health. Mr. Lundberg continued that the additional living space does have a significant draw on the water well but after testing the existing well it was found to be adequate for the proposed additional use. Kim Keil stated that the Martins are a young family wanting to join the community and it is important to bring new people into the area. Acting Chairman David Graziano opened the meeting to the public hearing at 7:45 p.m.

Skip Hover stated that he has no problem with the application as long as the plan is followed and disturbance to the creek is mitigated. No further comments. Acting Chairman David Graziano closed the public hearing at 7:46 p.m.

Steven Melnyk asked how far the septic is from the stream. Mr. Lundberg stated that the septic system is well over 200 feet from the creek. Acting Chairman David Graziano read the criteria for determining an area variance. Rob Fitzsimmons informed the ZBA members that the key to the application is that the plan is using the existing footprint and repurposes the existing structure. Acting Chairman David Graziano stated that he felt the area variance is excessive but it is only his opinion and he will go along with the ZBA decision. ZBA members voted negative to all of the criteria except for #5. George Schmitt reviewed the SEQRA for the ZBA members. Motion for 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 the 1,425 square foot area variance for the renovation of an existing barn to be used as a caretaker dwelling was made by Kim Keil with a second from John Porto. All members were in favor. Motion carried.

Mr. Lundberg paid \$5.76 for the cost of mailing the abutter notices.

NEW APPLICATIONS FOR May 25, 2016:

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. & Mrs. Seserman were present for the application. The applicants are seeking to construct an 8 foot wire deer fence around their property because it is a “deer highway”. Mr. Seserman informed the Board that their former tenant and some of the neighbors have fed the deer which has caused a problem for his property. Mr. Seserman continued that they have owned their home for 2 years and they have been battling the deer from eating their gardens and plantings. Mr. Seserman continued that the back of their property borders a wooded area which also contributes to the deer population. Mr. Seserman stated that the setbacks for the fence runs between 2 foot to 9 foot in different places and is most visible from the front of the property. Mr. Seserman stated that the variance is only needed on 3 sides of the property because it meets the setbacks on one side. Acting Chairman Graziano informed the applicant that the fence height limit for the Town of Claverack is 6 feet. Acting Chairman Graziano stated that a 6 foot fence would probably keep deer out. Mr. Seserman informed the ZBA members that he consulted with Cornell Cooperative Extension and they recommend an 8 foot fence. Mr. Seserman continued that the TOC Zoning Code does not specify what type of fence. Mr. Seserman explained that the fence he is seeking is a wire fence with wooden poles to hold it up. Mr. Seserman continued that the fence is basically see through and less visual impact than a wooden fence. Mrs. Seserman explained that they are trying to make their property beautiful but the deer are destroying everything they plant. Steven Melnyk asked the applicants if they have purchased the fencing. Mr. Seserman answered yes because he was unaware of the regulations. Steven Melnyk asked who is installing the fence. Mr. Seserman stated that it is a do it himself project. John Porto asked how large the property is. Mr. Seserman stated that the property is .9 of an acre so he cannot move the fence in because it would take up too much of the property and limits the available area for trees and gardens. George Schmitt asked if the property lines have been marked on the property. Mr. Seserman stated yes he just had a survey so that is why they have precise measurements for the variances.

Motion to accept the application as complete, classify as an unlisted action for purposes of SEQRA and set public hearing was made by Steven Melnyk with a second from Kim Keil. All members were in favor. Motion carried. George Schmitt stated that he was fine with the survey map.

Mr. Seserman was instructed to obtain a public hearing sign and to erect this sign two weeks prior to the June 29th meeting.

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.

Acting Chairman David Graziano informed the applicant that their property is located in the Hamlet Residential Zone. Acting Chairman Graziano continued that Town of Claverack rezoned the town and their parcel is now in the Hamlet Residential zone. Ms. Halstead informed the Board that she purchased the property several years ago under the idea of having this type of business on the site but now she found out that it is not allowed. Chris Post asked the applicants why they wanted to have a nursery. Ms. Halstead answered that she always planned to sell something on the site and this use would only be from May to June. Chris Post stated that this seems to him like a farm stand. John Porto stated that this would be a tent facility like the ones that are on Fairview Avenue in Greenport. Ms. Halstead informed the Board that she is not seeking a greenhouse only small tents but it is not permitted. Oliver

Milot stated that since the requested use is seasonal from May to June the business is essentially over for this year and is the property still up for sale. Ms. Halstead answered yes the property is for sale and has been for sale for several years but there isn't much that the property can be used for because of the location. Ms. Halstead continued that several times they have had people interested but they always back out because of the location. George Schmitt informed the Board and applicant that the use is a nursery per the definition of "Plants for sale" and it is not a farm stand as per § 2.74 found on page 17 and the application is seeking a permanent fence. Rob Fitzsimmons informed the applicant and the Board that the 1st large impediment of requesting a Use Variance is to prove that the request is not self-created which is possibly feasible because of the argument of the zoning change. Rob Fitzsimmons stated the 2nd is to submit dollars and cents proof which would mean to hire an appraiser to go through the TOC Zoning Code and prove that each allowed use will not gain a reasonable return. Rob Fitzsimmons informed the applicant that a Use Variance is the hardest variance to obtain because the applicant is seeking a use that is not allowed. Ms. Halstead asked how the Town of Claverack could change the zone of their property without asking their opinion or letting them know it was happening. Ms. Halstead informed the Board that there is a diner, cell tower and storage unit business right next to this property but they are limited as to the use they can have. Ms. Halstead continued that no one will want to purchase her property for a residence with these businesses right next to them. Rob Fitzsimmons read the Zoning Code of all of the uses that are allowed on this site. Rob Fitzsimmons informed the applicant that there are several permitted uses for the property so it makes the argument of not being able to find a reasonable return difficult to prove. Ms. Halstead informed the Board that she requested a peddler's permit from the Building Department but was told that this is not a use for this type of permit. Rob Fitzsimmons informed the applicant that a peddler's permit was established several years ago for salesmen selling encyclopedias, magazines or other types of door to door sales. Ms. Halstead asked who decided to change the zone for the property. Rob Fitzsimmons stated that the Town of Claverack Town Board began the process of re-zoning the town in 2008 and after multiple public hearings the town was rezoned and since this time there have been a couple of more instances of rezoning times. Rob Fitzsimmons informed the Board that the criteria for granting a Use Variance is dictated by New York State law. Acting Chairman David Graziano informed the applicant that these laws can be found on the website and the Town of Claverack Planning Board is required to abide by these laws. Kim Keil informed the applicant that she will need to hire an appraiser and submit the requested information to show that they cannot obtain a reasonable return through a permitted use. Steven Melnyk asked the size of the parcel in question. Ms. Halstead stated that the parcel is 4.4 acres but that only a small part of the parcel is usable because it is full of bogs and swamp areas and that culverts are needed to relocate the runoff. Acting Chairman David Graziano stated that New York State issues the law and the TOC ZBA must adhere to these regulations but the Zoning Board of Appeals is sympathetic to the applicant's frustration. Ms. Halstead asked what if she had proof from a real estate agent that the property is unsalable. Rob Fitzsimmons answered that the Board will need a competent dollars and cents report from an appraiser showing that each of the permitted uses cannot be obtained and would not find a reasonable return to the owner. Ms. Halstead stated that the property would not be a good parcel to build a home. Rob Fitzsimmons suggested that the applicant hire an expert to help with compiling a report. Ms. Halstead stated that the zoning was changed on her property without her knowledge and now she can't use the property or sell it. Mr. Avery asked why the public was not notified of the zoning changes like they are noticed for a public hearing for the Zoning Board of Appeals. Rob Fitzsimmons answered that the Town of Claverack is required under New York State to duly notice public hearings in local newspapers and on the website when it involves a Town wide issue such as rezoning. Mr. Avery informed the Board members that they are not seeking a large extravagant business. Steven Melnyk informed the applicant that the definition that is placed on the use and that if the Zoning Board of Appeals were to approve the variance they the applicant would be required to apply for a Site Plan/Special Exception review before the Town of Claverack Planning Board which would require additional fees and also because the request is that of a commercial use the NYS DOT would require curb cut plan which are expensive and might be cost prohibitive. The Board suggested that the applicant review their request.

New Business:

Board members were notified that the Secretary, Jodi Keyser is unable to attend the June 22nd meeting due to a conflict with her other employer so the date of the June Zoning Board of Appeals meeting needs to be rescheduled.

Board members discussed different dates. Members decided on holding the June Zoning Board of Appeals meeting the following Wednesday, June 29th at 7:30 p.m.

Secretary Jodi Keyser will check the availability of the Town Hall for June 29th with the Town Clerk's office.

Motion to adjourn the meeting was made by Steven Melnyk with a second from John Porto. All members were in favor. Motion carried. Meeting adjourned at 8:30 p.m.

Respectfully submitted,
Jodi Keyser, Secretary