

APPROVED 5/24/17

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544
Minutes: April 26, 2017

Chairman David Graziano called the April 26, 2017 meeting to order at 7:30 p.m.
Chairman Graziano led members of the Board and audience with the Pledge of Allegiance.

Correspondence: None

Board members reviewed the minutes of the March 22, 2017 meeting.
Motion to approve the March 22, 2017 minutes was made by Chris Post with a second from Roger Case. All members were in favor. Motion carried.

CONTINUING APPLICATIONS FOR 4/26/17:

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.

Philip Massaro was present for the application. Mr. Massaro gave the Board members a brief review of the proposal. Mr. Massaro informed the Board that his client is seeking to subdivide their 39 +/- acres into two parcels of approximately 36 acres and 3 acres respectively. Mr. Massaro continued that the issue is that the property has only 50 feet of frontage so they are seeking an Area Variance for 30 feet. Chairman Graziano opened the meeting to the public hearing at 7:35 p.m. No comments were heard. Chairman Graziano closed the public hearing at 7:36 p.m.

George Schmitt reviewed the SEQRA Part II for the Board members. Chairman Graziano Motion to grant a negative declaration for purposes of SEQRA was made by Steven Melnyk with a second from Chris Post. All members were in favor. Motion carried.

Chairman Graziano then reviewed the criteria for granting an Area Variance for the Board. Board members agreed that the percentage of the variance was large and was self-created. Rob Fitzsimmons informed the Board that a feasible alternative cannot be obtained.

Rob Fitzsimmons informed the Board that the applicant has supplied a driveway agreement and maintenance agreement for the private driveway.

Chairman Graziano stated that the ZBA has approved some and denied some of these Area Variances in the past. Steven Melnyk stated that the majority of the subdivision is planned as an agricultural use and the Town of Claverack is friendly toward agriculture.

Motion to grant the Area Variance of 30 feet for purposes of Frontage as depicted on the survey maps and because a feasible alternative cannot be obtained was made by Steven Melnyk with a second from John Porto.

All members were in favor. Motion carried.

Concra, Margaret & Vincent b/d/a Subway Interpretations: Tax Map #*(SBL)121 . 03 – 03 -16 . 100 Located at 634 NYS Rte. 23-B & NYS Rte. 9-H Interpretation for Use as a Multi-Use Commercial store selling propane tank return and firewood along with the Subway and Interpretation of Zoning code to allow for the installation of a pole sign along with a sign on the building.

Pat Prendergast and Margaret Concra were present for the application. Mr. Prendergast informed the Board that his client is seeking interpretations on two separate issues. Mr. Prendergast stated that the issues are the addition of a second sign and seeking multi-use commercial with the addition of firewood and propane sales. Mr. Prendergast started with the first issue of the addition of a pole sign. Mr. Prendergast informed the Board that the TOC Zoning Code states that businesses are allowed one (1) main sign which leaves the interpretation open and not detailed. Steven Melnyk stated that Table 4 of the TOC Zoning Code doesn't say that 2 signs are allowed or say and/or so in his opinion it looks like either a sign on the building or a sign on the ground but that the code doesn't appear to him it meant to allow for two signs. Mr. Prendergast informed the Board that in most communities where he works

as an engineer and or represents applicants that the Zoning Codes are more clearly written on number and total size of each sign but the TOC Zoning Code doesn't say one or two just the word main which leaves the interpretation open or meaning more signs could be allowed. Mr. Prendergast continued that the tie should go to the applicant where there is a discrepancy with the code. Steven Melnyk stated that the TOC Zoning Code allows for two business signs in the Commercial/Industrial Park. Mr. Prendergast stated that the intentions are nice but the code speaks to both and should say exactly what is allowed. Steven Melnyk stated that the business has two signs now because they have one now on the mailbox. Chris Post stated that the business had an approval to add two additional signs at the entrances. Mr. Prendergast stated that the business has a 1 foot by 1 foot neon sign also. Chairman Graziano stated that he understands the applicant's concern with visibility because it is difficult to see the business while traveling east and north. Chairman Graziano continued that the business was granted two additional signs to cover these directions and the applicant did not install them. John Porto stated that the signage is small enough and is not a big deal and the ZBA and Planning Board can restrict the lighting and hours of lighting for the sign. John Porto continued that every other business in the Town of Claverack has two signs i.e. the sign guy has multiple signs on his truck, mailbox, building and freestanding. Steven Melnyk stated that the sign business is in a different zone and therefore different sign laws apply and the Subway business is in an important area at the intersection. John Porto stated that there are already signs that are at the intersection before Subway was there. John Porto continued that Ms. Concra has greatly improved the property and made it attractive. Pat Prendergast stated that Ms. Concra is trying to add to the economic base of the Town of Claverack. Chairman Graziano added that this property is very important to the hamlet and although Ms. Concra has improved the site it is important to keep within the spirit of the Comprehensive Plan and not follow the store that is diagonally across the intersection. Chris Post stated that he understood the importance of signage but Ms. Concra has approval for two additional signs at each entrance that were to have lighting but she hasn't even installed them so she doesn't know if they would help or not. Ms. Concra stated that the TOC Zoning Code states that she can have two signs and she chose not to install the entrance signs but rather have a freestanding pole sign. Chris Post stated that the type of sign is important also and lighting must be external. Pat Prendergast stated that the sign will be very nice and will look good. Rob Fitzsimmons read Zoning Code 14.4.2 which refers to the dimensions of the signs which states that each business is allowed one (1) main sign and if the wording and interpretation is vague then the ZBA must rule in favor of the applicant. Pat Prendergast stated that the wording of (1) main sign is very vague and if the Town of Claverack only wanted businesses to have one sign then they should have made this clear in the Zoning Law because the wording of main sign signifies other signs are allowed. Pat Prendergast continued that the sign Ms. Concra is proposing will be a 2-foot by 4-foot , two-sided sign with Subway on both sides adding to 16 square feet. Rob Fitzsimmons that the application also seeks interpretation of Multi-use commercial to allow Ms. Concra to sell other items such as firewood and propane tank swapping. Rob Fitzsimmons stated that the business is approved as a restaurant and selling firewood and propane tanks is not ancillary to the use and the TOC Planning Board felt that this constituted a convenience store which is not allowed at the site. Pat Prendergast stated that the use is not of a convenience store because they do not sell fuel. Chairman Graziano instructed Mr. Prendergast to read the remainder of the definition which states that convenience stores do not have to sell gas. Chairman Graziano continued that the Planning Board feels that the additional sales constitute a convenience store and he feels that this is a convenience store type of use also. Chairman Graziano stated that it is a stretch to go from a restaurant to have to sell propane and firewood and these items are sold across the street at the Extra Mart convenience store. Pat Prendergast stated that he thinks that the law might have been written wrong. Chairman Graziano stated that he thinks that the law is written backwards. Chairman Graziano suggested that the definition be reviewed by the Town Board. Margaret Concra asked why there is such a stigma with a convenience store. Ms. Concra asked if the ZBA members feel that a convenience store is unsightly. Chairman Graziano stated that a convenience store does not only have to sell fuel because 2 out of 10 do not sell fuel but it is not a use that is permitted in the Hamlet Business Zone. Pat Prendergast stated that the Multi-use Commercial definition fits the site better than that of a restaurant. Chairman Graziano stated that the true definition of a Multi-use Commercial means that all of the uses are within the structure and would each have a separate entrance like the strip mall that was approved for the intersection of NYS Rte. 66 and 9-H. Steven Melnyk stated that he feels the same way and the firewood and propane make it more of a convenience store then a multi-use commercial and a convenience store is not allowed. Rob Fitzsimmons informed the audience to direct their comments to the Board members and not to the applicant.

Chairman Graziano opened the meeting to the public hearing at 8:10 p.m.

Peggy Lampman stated that Ms. Concra has referred to her business as a convenience store but she isn't getting it that this use is not permitted.

Gretchen Stearns stated that she is a member of the TOC Planning Board and was on the Comprehensive Plan Committee but is appearing before the ZBA as a private citizen. Gretchen Stearns stated that first, the interpretation of Multi-use Commercial Structure. The definition (2.132) says it is " A single structure which was designed for and occupied by more than one commercial use..." My clear recollection is that we intended this to mean a structure like the building which contains the liquor store, the post office, apartments and, soon, Coyote Flaco; one owner of the building, but different small businesses, to give different small businesses a chance to set up shop without having to buy a big building themselves. We limited it to "...four individual uses within a multi-use structure." The fact that this applicant would be the sole proprietor of multiple businesses, though not exactly what we envisioned, would be fine if all her proposed businesses were housed within one structure. She could then ask for a site plan review for a new retail store within the building now occupied by the Subway store, which is currently permitted as an eatery. However, as I understand it, the Subway building does not have any extra space. If there are plans to enlarge the structure so that it could house multiple uses, that would work, but Ms. Concra is asking to put, in the parking lot, a display of propane tanks, firewood, and "...other items such as sand at different times of the year."(Quote from the March 6th minutes of the Planning board meeting). This brings up the code on outdoor storage: 10.2.1. Since these are not products produced on site, the law as laid out in 10.2.1 A and B will apply: exterior storage must be located in the rear yard and enclosed by a 6 foot solid fence. This is not at all what Ms. Concra had in mind, and I doubt that she is aware of this, but she should be made aware of it before she comes back to the PB. The section 15.3.23, dealing with the commercial storage of fuels in tanks, might also apply to the matter of the propane tanks. If she had a retail store within an expanded structure, she could then follow 14.4.2 C, which says: "Each individual business in the multi-business building will be allowed one building mounted sign to mark it's individual entrance." And she could have one multi business directory sign as well. Which brings us to the sign law! When Ms. Concra was last before the PB, we thought we had made it clear that, in spite of the lack of a specific allowed number on the Sign Table, the text of the code, 14.4.2 A, states that one sign is allowed. We have followed that rule since the law was approved in 2012. Her only choice was whether she wanted a new sign on a pole (to replace the sign on the building), or if she wanted to retain the current sign. If I understand it correctly the meaning of "one main sign "is being challenged along with whether the text takes precedence over the less clear Table. I think the Comprehensive Plan definitely meant there to be only one sign per business. If we say you can have one MAIN sign, but that means that then you can have whatever else you want, the law becomes absurd. Though we can still try to enforce parts of the code, such as those prohibiting large truck signs parked at a business to advertise that business (14.4.5 M and 14.4.3 D). The Town Board has made those of us on the PB aware that there is a feeling among some people in town that we are against business, specifically that we have been hounding Ms. Concra. I think we have simply asked her, time and again, to become familiar with the code and to follow it. I know she has found dealing with the PB and the various Zoning Enforcement Officers and Building Inspectors frustrating, but we have, a number of times, thanked her for doing such a nice job renovating the building, and have found ways to work with her to make that corner more attractive. At this past month's PB meeting we gladly and unanimously agreed to her plans for an awning and picnic tables (without signage) and were encouraged and delighted by her stated intention to put up decorative barriers, and in lieu of the green space on the original site plan, to use planters at the corner and some plantings by the entrances. I admire her ambition to grow her business, but if she wants reclassification as Multi-use Commercial the only way forward that I can see for her now, on this property, is to expand the current structure. Gretchen Stearns stated that she doesn't understand why Ms. Concra has not installed the signs at the entrances that she was approved for by the Planning Board.

Mike Brandon informed the Board that he has lived in the Town of Claverack all of his life and his father and grandfather before him. Mr. Brandon stated that he was informed by Jonathan Nichols that he Zoning Board of

Appeals is the lowest form of an appellate court in the State of New York. Mr. Brandon stated that he does not feel that Subway has a tremendous impact on the intersection and the addition of new businesses is good for the Town of Claverack. Mr. Brandon continued that his father was devastated in 1967 when New York State became a sales tax state because it hurt the business growth. Mr. Brandon stated that Ms. Concra's business is creating sales tax for the town. Mr. Brandon continued that the TOC Planning Board approved a waiver for Coyote Flaco to decrease its required number of parking spaces so why can't they allow Ms. Concra to sell firewood and propane at her site.

Peggy Lampman asked what this has to do with Ms. Concra's business.

Mr. Brandon answered that it is an appeal from a business to be able to create sales tax.

Ian Nitchke addressed the Board because he owns the closest neighbor to the business and lives in the old Dutch house on NYS Rte. 23-B. Mr. Nitchke stated that he is concerned because of the historic nature of the hamlet and would not want to see this become compromised with signs. Mr. Nitchke continued that at least 30 parcels within the Hamlet are or could be on the registrar of historic properties. Mr. Nitchke asked that the Board consider requiring the applicant and future applicants to design modest signs like the new sign at the rental house Gordon's Tavern.

Gretchen Stearns stated that Ms. Concra agreed to landscape and has made the property look much better but still should be held to the approved Site Plan.

Peggy Lampman stated that she agreed with Gretchen Stearns and the Comprehensive Plan is a wonderful document and should be upheld by the Planning Board and the Zoning Board of Appeals and that just because people want to have more signs doesn't mean that they should be allowed. Ms. Lampman continued that the laws should be followed.

John Porto stated that he didn't have a problem with the second sign. Peggy Lampman stated that it is not just that it is OK but it isn't what the law allows.

Chairman Graziano closed the public hearing at 8:45 p.m.

Rob Fitzsimmons informed the Board that the Planning Board approved the addition of picnic tables with umbrellas and to install an awning all are without any signage for applicant at the April meeting. Ms. Concra stated that every time she appears before a Board in the Town of Claverack she is mocked. Steven Melnyk stated that this is not true and asked that she continue her appeal. Ms. Concra continued that she needs to sell these additional items because people will take their business across the street to the Extra Mart. Ms. Concra continued that she is forced to sell cigarettes and lottery tickets with firewood and propane to be competitive with Extra Mart and to bring customers in to her shop who will also purchase a sandwich. Ms. Concra stated that these additional things give her a better shot of having a successful business. Chairman Graziano stated that he understands wanting a successful business but the definition of Multi-use Commercial was intended to have a building with multiple businesses that had separate entrances. Chairman Graziano continued that the additional uses of firewood and propane sales are outside. Chairman Graziano also stated that he understands the need to have signs to attract customers but Ms. Concra is asking for a change in signage when she hasn't even installed the signs that she was granted approval on. Chairman Graziano continued that Ms. Concra cannot determine if the approved signs would work or not. Steven Melnyk asked if there could be a sign on a pole near the building. Pat Prendergast stated that he is trying to follow the TOC Zoning Code Table 4 saying that a business is allowed one (1) main sign. Mr. Prendergast continued that he understood that Gretchen Stearns is a super volunteer but the wording of the Zoning Law doesn't come out the way she thinks it should. Mr. Prendergast continued that if this was to go to court the wording "one main sign" would be found legally correct and indicate that other signs were allowed. Mr. Prendergast stated that his client is seeking an additional sign that will be on a post at 6 feet in height and will be a two sided 2-foot by 4-foot sign with the Subway logo on. Rob Fitzsimmons informed the Board that the application is exempt from SEQRA because it is an Interpretation. Rob Fitzsimmons continued that the ZBA can make an interpretation on the use and the signage or discuss the issues further. Steven Melnyk stated that the

definitions in the TOC Zoning Codes need to be nailed down. Chairman Graziano stated that the ZBA needs to make the determination on the interpretation using the TOC Zoning Codes as they currently stand. Chris Post asked why the applicant hasn't installed the two entrance signs that she was approved for. Rob Fitzsimmons informed the Board that the Planning Board members came into a compromise with the applicant allowing for two delineation markers with signage. Chairman Graziano suggested that the applicant stick to the approved signage and to go to the Town Board to have the law changed or better written. Ms. Concra stated that she was told that the two entrance signs have timed out. Steven Melnyk asked what if the sign were out by the road where would it be located in the parking lot. Chairman Graziano stated that people are either against the sign or for the sign at the intersection not so much the size. Rob Fitzsimmons stated that he would check to see if the two entrance signs have timed out. Pat Prendergast stated that the glitter from the Extra Mart brings customers to their shop instead of to the Subway shop. Mr. Prendergast continued that because the TOC Zoning Law is so unclear then the interpretation should go in favor of the applicant. Mr. Prendergast continued that his client will be required to review the size and design of the sign anyway. Ms. Concra stated that the word "main" means that the business can have more than one sign and indicates that others are allowed. Chairman Graziano asked for a vote on the Interpretation of the signage. Chris Post-no, John Porto-yes, Roger Case-yes, Steven Melnyk-yes, Chairman Graziano-no.

Motion to make the interpretation to allow for the Subway shop to have a 24 square foot free-standing sign in addition to the 16 square foot building sign.

Chairman Graziano then asked for a review of the definitions of a multi-use commercial business. Rob Fitzsimmons informed the Board that the applicant had received approval for the use of a restaurant and a multi-use commercial under 2.1.32 is a single structure which has individual businesses within the structure with separate entrances. Pat Prendergast stated that the firewood and propane are flammable so they are required to remain outside the structure. Chairman Graziano stated that he still feels that these added items make the business a convenience store rather than a restaurant. Ms. Concra informed the Board that Subway is not considered fast food but rather casual fast food. Pat Prendergast informed the Board that this is not a convenience shop because it does not sell fuel and is a multi-use commercial operation. Chairman Graziano stated that the previous owner of the property was granted a multi-use commercial use because he was proposing to construct a building with a couple of retail shops and a restaurant, possible office space with apartments on the second floor which is the true form of a multi-use commercial operation. Ms. Concra stated that the Subway does have a apartments in the building next door same owner. Board members told her that these properties were separate. Chairman Graziano asked for a vote on the Interpretation of the Multi-use Commercial use for the Subway and to allow for sales of firewood and propane. Chris Post-multi-use, John Porto-multi-use, Roger Case-multi-use, Steven Melnyk-multi-use, and Chairman Graziano-convenience store.

Town of Claverack Zoning Board of Appeals members voted that the interpretation of use is that of a Multi-use Commercial business.

Rob Fitzsimmons instructed the applicant to appear before the TOC Planning Board for a Site Plan Review of the sign and additional sales on 5/1/17.

NEW APPLICATIONS FOR 4/26/17:

Riley, Jessica Area Variance: Tax Map #(SBL) 121 . - 1 - 24 . 112 Located at 91 Courts Lane. Area Variance of 0 (zero) feet for frontage from the required 150 feet for a right of way at the end of Pine St. Claverack to access a proposed 20 acre subdivision. No show

Motion to adjourn the meeting was made by Chris Post with a second from John Porto. All members were in favor. Motion carried. Meeting adjourned at 9:05 p.m.

Respectfully submitted,
Jodi Keyser, Secretary