

APPROVED 7/26/17

Town of Claverack  
Zoning Board of Appeals  
P.O. Box V  
Mellenville, NY 12544  
Minutes: June 28, 2017

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

Absent: Roger Case and Steven Melnyk

Chairman David Graziano called the June 28, 2017 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Chairman Graziano led the Board members and audience in the Pledge of Allegiance.

Correspondence: Letter from the concerned neighbors of Pine Street regarding the Riley Area Variance.

Review the minutes of the May 24, 2017 meeting.

Motion to approve the minutes of May 24, 2017 was made by Chris Post with a second from John Porto. All members were in favor. Motion carried.

#### **CONTINUING APPLICATIONS FOR 6/28/17:**

**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.

Ms. Riley did not attend the meeting. Strike #1 – No show.

#### **NEW APPLICATIONS FOR 5/24/17:**

**Mary Koch/Thyme in the Country Bed & Breakfast Interpretation:** Tax Map #(SBL) 112 . 00 – 01 – 04 . 2 and 112 . 00 – 01 – 24 Located at 671 Fish and Game Rd. Interpretation of a Bed & Breakfast for owner to occupy a separate building on the property of the owner occupied bed and breakfast to allow her children to overtake the day to day operations of the business.

Ms. Koch was present for the interpretation. Ms. Koch informed the Board that she is seeking to obtain a bed and breakfast liquor license from NYS to be able to sell glasses of wine but because her certificate of occupancy prohibits this she cannot get the license. Chairman David Graziano informed Ms. Koch that her application for interpretation is not seeking to sell liquor but is for interpretation of being allowed to live in an accessory building 20 feet from the bed and breakfast. Rob Fitzsimmons reviewed the Planning Board application for the ZBA members to clarify the need for the interpretation. Rob Fitzsimmons informed the Board that Ms. Koch is currently before the Planning Board seeking several changes to her originally approved application for a home occupation bed and breakfast business. Rob Fitzsimmons continued that Ms. Koch is seeking to add an additional rental room to the bed and breakfast from 3 to 4 rooms, Ms. Koch is seeking to live in a separate structure from the bed and breakfast. Rob Fitzsimmons informed Ms. Koch that the issue of allowing liquor sales is up to the TOC Planning Board but buying bottles of liquor or wine to sell then sell to the renters is not allowed because it makes it a liquor store and not a bed and breakfast. Rob Fitzsimmons continued that TOC Building Inspector Jay Trapp referenced a discrepancy of the number of currently advertised rental rooms at the bed and breakfast on the businesses website. Mr. Yurgen informed the Board that a bed and breakfast is allowed to sell alcohol to their customers according the NYS Zoning laws for bed and breakfasts. Ms. Koch stated that there is such a thing as a liquor license for bed and breakfast operation. Rob Fitzsimmons informed the ZBA that Ms. Koch is currently residing on the front porch of the residence and has rehabilitated a shed on the property that she is also using as a rental space according to her website. Rob Fitzsimmons informed Ms. Koch that she is permitted for 3 rental rooms only. Ms. Koch stated that she has 4 rental rooms but one of the rooms is

connected to another room and is not rented separately only as a family suite when needed. Chairman Graziano reads the TOC Zoning Laws definition regarding bed and breakfast businesses § 2.32. BED AND BREAKFAST INN. An owner-occupied dwelling unit that contains no more than four (4) guest rooms where lodging, with or without meals, is provided for compensation. Ms. Koch informed the ZBA members that the NYS Laws regarding bed and breakfast businesses is different than in Claverack. Ms. Koch continued that she rents out 3 rooms in her residence and sleeps on the porch but would like to be allowed to rent out another room in her home and then reside in the rehabbed barn on her neighboring property. Chairman Graziano informed Ms. Koch that a bed and breakfast is an owner occupied business which means that the owner must occupy the residence and that no more than 4 beds be in the residence. Chairman Graziano continued that the permit that former TOC building inspector Stan Koloski issue on 2/29/08 indicates with #9 of the permit that the owner must live in the residence and this is in coordination with the TOC Zoning Law definition of a bed and breakfast which also states that the owner of the bed and breakfast must reside in the dwelling. Ms. Koch informed the Board that she goes to many meetings and knows of several people that own bed and breakfast businesses that do not live in the main residence also knows of many illegal air b&b operations. Ms. Koch stated that she leaves the bed and breakfast several times a day to shop which is necessary so she is not there at all times. Chairman Graziano stated that the law does not state that the owner needs to be present at all times in the business and he understands that shopping and other things need to be done but the owner is required to be present in the residence when there are renters staying. Ms. Koch stated that she is asking to be allowed to reside in the renovated barn which is only 200 feet away. Chairman Graziano stated that it is not the definition but is only one opinion and if Ms. Koch is seeking to have the definition changed then she needs to appeal to the TOC Town Board. Rob Fitzsimmons questioned Ms. Koch on the number of rooms that are rented. Rob Fitzsimmons stated that the business website details a sumac room, rose room, lavender room and a chamomile room. Rob Fitzsimmons then asked about a complaint that was posted regarding a woofer room. Ms. Koch stated that this was not a room but was posted by a disgruntled former employee. Rob Fitzsimmons continued that another complaint from the TOC Building Dept. references the use of the barn as a living structure. Ms. Koch informed the Board that she has renovated the barn into a living residence and this is where she would like to reside instead of the main residence. Rob Fitzsimmons then asked about Al's shed which is being referred to on the website as the eco-cottage which is located 100 feet from the main residence. Ms. Koch stated that this has changed. Rob Fitzsimmons informed Ms. Koch that she needs to be specific with her requests and that it may appear that she has exceeded her limit of use. George Schmitt asked how many bathrooms are used for the bed and breakfast and additional bathrooms on the property will require a review from the CCDOH. Ms. Koch stated that she has 3 bathrooms and one of the rooms uses a composting toilet which is ok as per the CC DOH and great for the environment. Ms. Koch stated that she knows of a business that uses at least 5 composting toilets and is permitted by the CCDOH. Ms. Koch stated that she knows the Rockefeller farm on Taconic-Churchtown Rd. uses composting toilets that are permitted. George Schmitt asked Ms. Koch to bring in the proof of the CCDOH permitting. Ms. Koch asked how she would get this information. George Schmitt suggested Ms. Koch file a FOIL request with the CC DOH for the information. Ms. Koch stated that she spoke with CCDOH Mike DiRuzzio who knows all about the AR composting toilets and he feels that this is the state of the future for septic systems. Chairman Graziano asks the Board members how they feel about the interpretation that is being requested. Chris Post stated that he would be in favor of allowing Ms. Koch to reside outside of the main residence because it is a good business and helps economic growth. George Schmitt informed the Board members that their job is to interpret the definition of the TOC Zoning law. Rob Fitzsimmons informed the Board and applicant that the application is seeking an interpretation but also might require a Use Variance because the scope of the use seems to be enlarged from the original permitted use. Rob Fitzsimmons informed the applicant that a Use Variance is very difficult to obtain because it is required to meet the 5 criteria and the odds of having a Use Variance granted is slim. Rob Fitzsimmons informed Ms. Koch that the interpretation for what she is seeking is not something that the ZBA can justify but she is free to go to the

Town Board to have the definition modified. Rob Fitzsimmons continued that Ms. Koch has already informed the Board that she is using a room that is not permitted but this all being said he wants to lead Ms. Koch in the right direction and to help her and not make things worse. Chairman Graziano stated that he understands the economic development aspect to the application but feels that the Board needs to follow the definition as written at this time. Chairman Graziano instructs the ZBA members to read and then interpret the TOC Zoning Law definition of a bed and breakfast on page 13 § 2.32. Town Board member Katy Cashen asked Ms. Koch to supply the ZBA with the NYS Definition for Bed and Breakfast businesses because she was under the impression that the TOC Zoning definitions followed the NYS definitions. Ms. Koch informed the Board that the uses of a Bed and Breakfast have changed greatly over the years. Rob Fitzsimmons informed Ms. Koch and the Board that when a bed and breakfast gets too big then it needs to follow the NYS codes which means that fire escapes and sprinkler systems are required which is why the TOC Code limits the bed and breakfast size because it falls under a residential home occupation business and meant to remain a small, low impact use. Chairman Graziano asked the Board members for an informal vote on the interpretation. Board members were in agreement that the interpretation of the TOC Zoning Law states that the owner/operator of a Bed & Breakfast is required to reside in the residence. Chairman Graziano informed Ms. Koch that the ZBA is bound by the TOC Zoning Laws and she can always appeal to the Town of Claverack Town Board to request a change in the law.

Motion to adjourn the meeting was made by John Porto with a second from Chris Post. All members were in favor. Motion carried. Meeting adjourned at 8:32 p.m.

Respectfully submitted,  
Jodi Keyser, Secretary