

Cazenovia Zoning Board of Appeals

Meeting Minutes

July 25, 2011

Members present: Chris Fischer, Chairman; Louis Orbach; Richard Sheridan; David Silverman; Gene Smith

Members absent: None

Others present: Wendy Reese, Esq.; Roger Cook; Ann Redfern; Conor Kays; Michael Rudy; C. Kays; M. Rudy; P. Hazer; D. Hazer; L. Osborne; B. Osborne; J. McDonald; Kevin Curtis; Kristin Curtis; John Whittle; Judy Whittle; M. Lee; T. Gunerman

C. Fischer called the meeting to order at 7:30 pm.
The next regularly scheduled meeting is August 22, 2011.

C. Fischer asked if there were any corrections or comments for the June meeting minutes.

Motion by C. Fischer, seconded by L. Orbach to approve the June meeting minutes as amended was carried with the following voting:

C. Fischer: yes
L. Orbach: yes
R. Sheridan: abstain
D. Silverman: yes
G. Smith: yes

Sovik, Charles - #08-565 – Special Use Permit Renewal – 3813 Number Nine Road

C. Fischer stated that the special use permit is to raise farm animals on the property. The permit has been in existence since 2008.

C. Fischer stated that R. Cook inspected the property on July 20, 2011 and found no items of non-compliance.

Motion by C. Fischer, seconded by D. Silverman to appoint the Zoning Board of Appeals as Lead Agency for purposes of the State Environmental Quality Review Act (SEQRA), to declare the matter an Unlisted Action and to make a Negative Declaration of environmental significance, all based upon the Board's review of the Short EAF, and to approve the Special Use Permit Renewal under the same terms and conditions as previously approved was carried unanimously.

Hile, Dennis - #11-758 – Special Use Permit & Area Variance – 5089 Temperance Hill

C. Fischer stated it was for a continuation of a public hearing for a special use permit for a wind turbine and an area variance at 5089 Temperance Hill Road. C. Fischer summarized the current status for the Board. As of the last meeting, there were still some open items that needed to be addressed by the applicant, one of which was final site location of the windmill. Since that time, the Board received the final location and forwarded the information to the Madison County Planning Department and the town engineer for their input. The Board received a letter back from the town engineer, John Dunkle, dated July 19, 2011. C. Fischer summarized Mr. Dunkle's letter for the Board which stated the letter asked for more specificity on the plan itself and listed the various items in the town code to make sure they were addressed by the Board. The letter also stated if the project called for more than one acre of site disturbance, the DEC's, SPDES and storm water prevention requirements would be necessary. C. Kays stated that much land would not be involved.

The Board received referral back from Madison County Planning Dept. They concluded that the setbacks would have no adverse county-wide impact and returned the file for local determination. Madison County also inquired, as with any area variance, if there was any place else that the tower could be placed without a variance. The Board had already discussed this with applicant and the location was determined based on optimum operation.

Another item to be addressed was a response from Verizon regarding its cellular tower. Alternative Power Solutions received a response via email which they submitted to the Board. Verizon stated there was no concern with the proposed location of the windmill in regards to the nearby cell tower.

C. Kays submitted noise data test information which was for a 100' tower. C. Kays stated he knew the local law does not want the windmill to exceed 50 decibels to the nearest property line. Alternative Power Solutions did the calculations for 140' (the height of tower itself) and the decibel level was 49.5 dba. C. Fischer asked applicant if this data was current and for the exact same wind turbine as the one being installed. C. Kays confirmed to Board the information submitted is for the exact model that is being installed.

C. Kays stated they went through engineer's recommendation and they will submit site-specific drawings once they have permanent approval. C. Kays stated the drawings are typically submitted before they break ground.

C. Fischer asked the applicant if they had documentation that they noticed for a public hearing. C. Kays submitted the letter and names of people they sent hearing letters to.

C. Fischer stated that the application was published for a public hearing and asked if anyone was present to speak for or against the application.

As no one was present, motion by C. Fischer, seconded by G. Smith to close the public hearing was carried unanimously.

The Board asked C. Kays about the height and if the shorter 60' Bergey model would be an option. C. Kays stated going to the shorter windmill would lessen the State funding, and the yearly kilowatt output would be reduced. The desired windmill would be the most cost effective and beneficial investment to Mr. Hile.

Motion by G. Smith, seconded by R. Sheridan to appoint the Zoning Board of Appeals as Lead Agency for purposes of the State Environmental Quality Review Act (SEQRA), to declare the matter an Unlisted Action and to make a Negative Declaration of environmental significance, all based upon the Board's review of the Short EAF, and approve a special use permit for a generating tower with a 153' height and 172' from the North property line which includes a 3' height variance and a 6' North side line variance contingent upon finalized specific plans was carried unanimously.

C. Fischer stated he will not sign the plan until they submit the actual plan.

Hazer, David & Penny- #11-770 – Use Variance – 5857 East Lake Road

C. Fischer stated the file originally was submitted for a special use permit application and then it was determined by J. Langey and R. Cook it should be a use variance application. C. Fischer stated thus the review would be informal.

C. Fischer asked the applicants to give a description of their project.

P. Hazer stated they talked to R. Cook about some application issues. They submitted a special use permit application, a site plan application and a use variance application.

P. Hazer explained their intent to the Board. They have approximately 12 ½ acres and a horse barn. Currently, they have 4 horses for recreational purposes; children and 4H groups come to their property. They want to let their daughter do horsemanship lessons and generate a little income.

C. Fischer stated it is a use variance because the applicant is requesting an income-generating public use stable in a residential district which is a use that is not permitted.

R. Cook explained the code for horses: 3 acres allows you to have 2 horses and for each additional 1 ½ acres you are allowed an additional horse.

P. Hazer stated they have approx. 8 acres in the Town of Cazenovia and 4 ½ acres in the Town of Sullivan and she does not envision having 6 horses all the time; it could be intermittent or seasonal.

P. Hazer reconfirmed to C. Fischer it would be no more than 6 horses and occasional horsemanship lessons.

C. Fischer explained to applicant that they need to meet the criteria for a use variance application. The part of the criteria that is hard to prove is the economic hardship requirement- which basically means the applicant is deprived of all economic use and benefit from the property.

R. Cook stated when the Hazer's built the barn this was a use that was permitted. However, since that time, zoning laws have changed which make the use not allowed. R. Cook stated the Hazer's could possibly prove to the Board that they lost potential use of their property.

The Board asked if there was a grandfather option since the law changed and W. Reese stated it was not used as a public stable at the time it was an allowed use so it would not be grandfathered.

C. Fischer stated next month it will be scheduled for a use variance public hearing.

C. Fischer offered some advice to the applicant. They could possibly provide an accountant report with detailed economic history information.

R. Cook stated they are contiguous to a certified state agricultural district. They could petition Madison County to include their property in that agricultural district and they could possibly fall under the agricultural overlay district which allows private or public stables to have horses and collect income. He further stated how the process generally works: in a state certified agricultural district you are stating you will not sell off the land for housing lots and you will preserve as agricultural land. If you do decide to subdivide, in the future, you pay a refund to County, the tax savings, etc.

If the applicant was granted to be in the agricultural overlay district, they would return to the ZBA for a special use permit.

C. Fischer suggested to applicant to call the County about the agricultural district idea or if they want to proceed with the use variance to notify the Town office before we have to publish for a public notice.

Osborne, Brian & Linda- #11-773 – Special Use Permit – 4561 Ridge Road

L. Osborne opened by addressing the audience with a description of who her and her husband were, their background and her aspiration to run a bed and breakfast.

C. Fischer disclosed to the applicants that in reviewing the notices that they sent to the adjoining property owners-one of the property owners that was noticed was Rod & Jana McDonald, and Jana McDonald works for the same law firm as C. Fischer's wife. C. Fischer further stated if the applicant saw that as a conflict; he would recuse himself and the Board would proceed.

L. Orbach stated that Rod McDonald was one of his law partners at Bond, Schoeneck & King, and therefore recused himself.

C. Fischer stated he could recuse himself now, or in the future, if they decided at a later time; it was the applicant's choice.

R. Sheridan stated if C. Fischer recused himself also, that the three remaining members of the Board would have to vote "yes" which C. Fischer confirmed.

C. Fischer stated that the meeting would be informational only due to a "notice issue." There was a mistake. An application has to have three different types of notice for a public hearing. A notice has to be made in the paper, a notice to adjoining neighbors, and a sign needs to be posted 5 days before the hearing. The sign was not installed and it was an oversight by the Town.

C. Fischer asked the applicant to review the project.

L. Osborne stated, by law, she can have 5 rooms-no more than 10 guests. As she understands, she can have 2 events that she would still need to come to the Board to get a special use permit and have a public hearing. They will live on the 3rd floor. She contacted Madison County Health Department and as far as breakfast, it would be a continental breakfast.

C. Fischer stated that the parking requirement is 1 parking space per guest room and he wanted to know where the parking would be.

B. Osborne stated that the parking would be on the South side of the carriage house.

L. Osborne stated that there is a 5-car garage and the Osbornes would park their 2 cars in the garage and there is a carport for the carriage house.

The applicant showed a map to the board and explained there would be a chained area for designated parking and hopefully blacktop, in the future. She further stated that they could park in an area coming up from the driveway but she really does not want parking visible from the road.

C. Fischer expressed to the applicants they should familiarize themselves with the town code for parking requirements for bed & breakfasts. The Board would need a sketch showing the location of parking, the 5 spaces (the length, the width, the angle).

L. Osborne stated they are not buying the gate house. They are buying the main house; the area outlined on the map.

B. Osborne stated there are 2 different lots. There would be an easement to be able to use the driveway to enter the property.

C. Fischer stated the Planning Board voted unanimously on a positive recommendation on July 7, 2011.

C. Fischer consulted with W. Reese who stated since the public hearing was published and noticed the public hearing could be held open for a month and it would not need to be renoticed by applicant or the Town. C. Fischer stated to meet the requirement of the sign notice it should be held open for another meeting.

C. Fischer stated that the application was published for a public hearing and asked if anyone was present to speak for or against the application.

Jana McDonald addressed the Board and audience and stated her and her husband's property was located closest to the proposed new use. The McDonalds, as well as, 3 other homeowners had additional questions: impact on surrounding neighborhood; concerns with parking (for guests to bed & breakfast); specificity where parking spots will be located; special event parking-where would it be located; specificity on lighting and signage; well issues; sewer line capacity; drainage issues if additional blacktop for parking; driveway use – no legal right to drive over the circle driveway except people visiting the McDonald's; restrictive covenant-residential use only; and bed & breakfast – will it run with land or personal to the applicant.

Kevin Curtis, a neighbor adjacent to the property, stated looking for reassurances in application as the Osborne's propose it to the Board. He also stated he would like to see the existing parallel paved driveway that intersects the 3 properties be turned into lawn so bed & breakfast guests do not go to the wrong place. He further stated concern with the bed & breakfast use-does it go with the property or the Osbornes.

C. Fischer stated the special use permit would be specific to the Osbornes not the property. If the property was to sell to new people, they would need to apply for a special use permit.

C. Fischer stated a change would occur if the property ownership changed. He used the example, "if the Osborne's were to move to CA and remained owners and their children wanted to run the business, it would not be considered a change because it is not a change in ownership (title of the property.)"

T. Gunerman, a neighbor on East Lake Road, stated he had no objection to a bed & breakfast. He came to inquire about the drainage systems that run across the property and wanted to know if there would be any changes that would impact the drainage systems.

J. Whittle addressed the Board and the audience and gave a brief history of the Jepson Estate. J. Whittle purchased the property in 1984 and it was undeveloped. J. Whittle explained the layout of the property. Three wells on the property and no water problems.

Michael Lee, a neighbor next to the Curtis', stated no objections to it becoming a bed & breakfast but he wanted clarification on the topics that J. McDonald asked for.

K. Curtis stated a concern regarding people looking down hill and seeing all the roads connected. He feels some of the pavement should come out so people do not see all the roads connected.

L. Osborne stated if the houses that have concern with having people go down wrong driveway they could put a "private drive" sign to deter traffic. The patch of pavement could be removed at the McDonald's expense. At this point, she does not want to spend the money. She will talk to guests on the phone and direct them via the chains.

C. Fischer stated the Board needs better copies of the survey.

C. Fischer replied to some comments from the audience. He stated parking for any events that may occur is relevant for an event-but not for the application in front of the Board for a bed & breakfast.

C. Fischer stated to the applicant to put things on the map (lighting, signs, parking).

C. Fischer talked regarding the sewer district. Roger Cook stated it is Madison County Sewer District #1.

R. Cook stated when original subdivision was done and lots were approved, application was made to Madison County Sewer District for the lots.

C. Fischer mentioned restrictive covenants that were a concern of J. McDonald. The town attorney's quick review/response of the covenants is that they are not relevant to the Board's determination of the application. C. Fischer further stated as a precautionary measure, the town attorney wanted to do additional research on the issue.

L. Osborne stated they have sought counsel on the issue of covenants.

C. Fischer stated a restrictive covenant typically runs with the land. It needs to be determined by the town attorney if the restrictive covenant is applicable to the Town Board or just the applicant.

C. Fischer asked the applicant to give a more detailed map and formally address any of the concerns that were raised by the neighbors.

C. Fischer stated for any neighbors that have any legal questions over the restrictive covenants to have them to the town office by two weeks from 7/25/11. Once they are received by town, it would allow the applicant and the town attorney two weeks to provide a response, if necessary.

C. Fischer further stated for the applicant to get their information in by two weeks. The applicant should contact Madison County Sewer District and ask them if they have any concern with increased flow to be accommodated into system due to a proposed bed & breakfast. C. Fischer wanted her to double check regulations before putting required items on the map.

Motion by C. Fischer, seconded by G. Smith to keep the public hearing open and request the applicant and property owner leave the town notice sign up until next month was carried unanimously.

At 9:19 pm, a motion by R. Sheridan, seconded by G. Smith to close the meeting was carried unanimously.

Zoning Board of Appeals Secretary – Connie Sunderman – July 25, 2011