

Cazenovia Zoning Board of Appeals

Meeting Minutes

November 26, 2012

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

Members absent: Chris Fischer, Chairman

Others present: Wendy Reese, Esq.; Roger Cook; Graham Egerton; Anne Redfern; Robert Cowherd, Jr.; Jennifer Basic; Richard Radelich; Mark Biviano

G. Smith called the meeting to order at 7:30 p.m.
The next regularly scheduled meeting is December 26, 2012.

G. Smith asked if there were any corrections or comments for the September meeting minutes.

Motion by G. Smith, seconded by R. Sheridan to approve the September meeting minutes was carried unanimously.

Padgett, William – #00-162 – Special Use Permit Renewal – 2514 Damon Road, New Woodstock

G. Smith stated the permit is 12 years old. He said it is for an office in a residence, a studio with two rooms and a bathroom. The activity is art and design.

G. Smith stated that R. Cook inspected the property on October 5, 2012 and found no items of non-compliance.

Motion by G. Smith, seconded 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 before was carried unanimously.

Cowherd, Jr., Robert – #01-73 – Special Use Permit Renewal – 2350 Route 20 East

Robert Cowherd was present for his special use permit renewal.

G. Smith said the applicant has had the permit for 11 years and it is for motor vehicle sales and service.

G. Smith stated that R. Cook inspected the property on November 20, 2012 and found no items of non-compliance.

R. Cook said, in the resolution that J. Langey drew up 2 years ago, it made a reference to the twelve conditions and one of the conditions is "the parking area will always be grass." He said the condition list is what he uses for his inspection sheet and he made a note that the parking area is no longer grass and the applicant got approval for crushed stone and he just wanted to clarify that point.

G. Smith asked Mr. Cowherd if he had any comments.

R. Cowherd stated no.

Motion by D. Sheridan, seconded 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 approved last time was carried unanimously.

R. Cook said there are new photographs in the file and on behalf of Mr. Cowherd he has done an admirable job of "weeding" out a lot of the things that may have been discussed in the past as being somewhat questionable and the photographs show that effort.

Radelich, Richard – #12-864 – Area Variances – 3300 East Road

Richard Radelich and Jennifer Basic, Esq. were present to represent the application.

J. Basic said it is a unique situation in which a home was built a year and a half ago and in the process there was a building permit requested which included two accessory buildings. She said the building permit application reflected the two accessory buildings and both were constructed and the permit was issued. She stated, subsequent to that, the Code Enforcement Officer noticed two buildings on the property, one of which is the second accessory building. She said it is virtually on the property line of the neighbor, and that is not allowed in the Code. She said they went to the Town of Cazenovia Planning Board and the Board made a recommendation that Mr. Radelich be allowed to retain two accessory buildings, but Mr. Radelich received a negative recommendation for the area variance with the second accessory building being located on the property line. She stated the immediate neighbor, who is her mother-in-law, Catherine Basic, does not mind the building there and has written a letter indicating that it is fine if it were to stay. She showed the Board the pictures in the file and said it is the best placement for the structure on the property because it is virtually invisible from the road. She said the neighbors were

sent proper notice of the hearing and several of the neighbors immediately adjacent to the property sent letters indicating that they did not object to the second accessory building or the location on the property. She said the house is at 3300 East Road and it is the second one on the left past Kissimmee Farm. She showed various photos to the Board and the location of the second accessory building located amongst the vegetation on the property. She stated two accessory buildings were approved and one of which is on the property line. She said the permit said "building" and the application said "buildings." She said they relied on the application and put up both buildings.

R. Radelich said the building was put up about a year ago in August. He said on his sketch he showed both buildings and filed the permit. He said the permit was rolled into the complete house plans.

J. Basic said they are looking for two variances; one to keep the second accessory building and the 25' side line setback which has not been met.

G. Smith inquired what the setback was for the shed.

R. Radelich said it is right on the property line.

J. Basic said they are looking for a 25' variance because it was put on the application in good faith and it is virtually invisible from the road in the brush. She pointed out the other accessory building on the property.

R. Radelich said he keeps a lawn mower and snow blower in the accessory building.

J. Basic confirmed the building in dispute was put up over a year ago.

J. Basic said the permit that was issued said building and did not indicate which one, and it was never questioned. She said the two buildings were referenced in writing as well as in depiction in the building permit application.

R. Cook said, in defense of Mr. Radelich that he travels back and forth between Cazenovia and Texas. He said during the time of application; he was not always available and he thinks there was some confusion and it was not maliciously done. He said he was not in Cazenovia a lot of the time during the process.

G. Smith said the Planning Board voted to make a positive recommendation on the second accessory structure and a negative recommendation for the setback.

G. Smith said the attorney for the Town indicated part of what the Madison County Planning Department said in the recommendation was not correct. He read the recommendation as follows: "While no adverse County impact would result from the placement of a shed so as to encroach into the side yard setback (specifics setback distances not provided with application but it appears to require significant relief as the shed is built right along northern property line) on the property located at 3300 East Road, the placement of this secondary accessory use in the RA district would also require a use variance. As submitted the applicant is only requesting an area variance, but 165-11 of Town Code clearly states "A principle use and structure may also have one accessory structure..." which would mean that having a secondary structure would be a use of the land for a purpose which is otherwise not allowed or is prohibited by the applicable

zoning regulations. However, it does appear that both accessory uses were listed by the applicant on the September 21, 2011 building permit application (which we assume is the same application submitted to the Town and ultimately approved) which the Town may want to consider in making its determination. In regards to the four criteria required in order to allow a use variance, it may mean that the alleged hardship is unique and not self-created. While the third test of a use variance could also possibly be met (the essential character of the neighborhood will not be altered if granted), we doubt that the applicant requires this use variance to realize a reasonable return on his property that could be proved by competent financial evidence which is also required for the granting of a use variance.

G. Smith said it does not have a bearing because J. Langey said it does not require a use variance.

W. Reese said a second accessory structure is seen as an area variance because you are allowing two as opposed to one and the Code allows one, so two would be an area variance because it is the number you are allowing as opposed to a completely separate use of the property.

R. Cook said J. Langey's interpretation is an accessory building is an accepted use as "by right" and a second one is an extension. He said if accessory buildings were not allowed then the use variance would be appropriate.

G. Smith stated it been noticed for a public hearing and asked if anyone was present to speak for or against the application.

No one was present to speak for or against the application.

Motion by D. Silverman, seconded by R. Sheridan to close the public hearing was carried unanimously.

W. Reese said, essentially, by the Planning Board's recommendations, they are allowing the second accessory building, but they do not like the placement.

J. Basic, a member of the Planning Board, said she recused herself from the vote for the Planning Board and she thought they were nervous as to the amount of the variance.

R. Cook said he thought the Planning Board and the Zoning Board of Appeals usually looks for a lesser number than total relief.

J. Basic said, from her client's perspective, the placement of the building in keeping with the character of the neighborhood and having it hidden, and it potentially will be a "sore thumb," if they take it out and put it someplace else. She stated where it currently stands is virtually invisible, and they could move it but it would be where more people could potentially see it.

W. Reese asked if the shed would be visible if it was behind the house?

J. Basic said not as much from the north side, but from the south side there are wide open fields. She stated, from an aesthetic standpoint, they want it secluded/hidden and convenient to use the snow blower.

G. Smith said he thought the Board approved a similar side yard variance for a similar reason, in the past.

J. Basic said she thought it was a wood shed in New Woodstock.

R. Cook said he agreed with what the applicant is saying and the lot is wide open. He said to meet the 25' setback anywhere on the lot would put it in the middle of the yard.

J. Basic said it is a vacant strip lot.

D. Silverman said normally in a situation like this they cannot make a motion for relief until they know where the surveyor's marks are located. He told the applicant, in most situations, they ask that a surveyor go to the site and mark where the building would be on the property.

R. Radelich said the storage building is 10'x12'. He stated the shed is slightly on Cathy Basic's property.

J. Basic said she was unaware of it being slightly on the neighboring property.

R. Radelich said the building is movable.

G. Smith stated to the applicant to make sure where the property line is and move the shed enough so it is solely on his property with the exact dimensions and then come back to the Zoning Board of Appeals.

R. Radelich said if he moves the shed it will be in the roadway on his lot. He stated the other option is to put it way back on the property but it would be hard to access.

G. Smith inquired to W. Reese if the Board could give a 3' variance from the property line and the applicant would be required to move it to meet the variance.

W. Reese said it is hard to give a variance without pictures to see. She said a lot of times it is being done for building purposes and it might defeat the purpose of why they are putting it in that particular location. She said the Board would probably want to see where it is actually going to be before saying 3' off the property line.

J. Basic inquired, if they were to move it on the property line and then have the surveyor add it to the survey and then come back; would it be possible to move it in the snow?

R. Cook said based on the weather if the Board passes the variance, the applicant has a year to evoke the variance.

W. Reese said she did not know if the Board would be inclined to grant a variance until they know the details.

R. Cook inquired if the applicant surveys the line and determines the building has to shift onto Mr. Radelich's property by "X" distance, on December 27, 2012 (the day after the next meeting) does he have to move it or does he have some latitude due to the weather and a future date set?

R. Radelich said he is going back to Texas until May.

D. Silverman said if it is on the neighbor's property, he strongly suggests it gets moved onto Mr. Radelich's property.

R. Radelich said it is currently on a roadway and if he has to move 3-4' it would be too close to the house, and he would probably move it from the area.

R. Cook said the drive is the old farm road.

J. Basic said it is a gravel farm road.

R. Radelich thought he was on his neighbor's property by a couple of feet. He said he got his neighbor's approval at the time.

G. Smith said the Board will continue the file and once it gets surveyed, the applicant should come back to the Board.

J. Basic told her client that the Board is asking that the surveyor does the measurements and adds the two buildings. She said once the Board sees that information on the survey, they will revisit the file.

Biviano, Mark {Hensley, Melanie(owner)} – #12-865 – Interpretation – 5774 East Lake Road

Mark Biviano was present to represent his application.

M. Biviano said he met with R. Cook last month and applied for a site plan because he wanted to open a winery at the location. He said in order to open a winery he needed to have 15 acres and the parcel is 5.8 acres. He stated, R. Cook inquired, if he would live at the residence, because if he lived there; he could have a special use permit.

R. Cook said the only allowed use would be a home occupation that would allow any retail-type use. He said, the question is, if you have a winery there, growing grapes and selling, could it potentially be looked at as a home occupation? He said there is not enough land for a special use permit and it does not fit under any of the Ag & Market laws. He said the question is, "could you get it under a home occupation?" He said he read the home occupation regulations and he does not think so. He said Mr. Biviano is before the Board to ask what they think about it?

M. Biviano said his daughter will be living there and she is a big part of the family business, so he thinks it is owner-occupied.

M. Biviano stated that the location is on East Lake Road where Cheese Factory Road meets it. He pointed out on the map the location of the vineyard, the tasting area in the back of the house and the house, itself. He stated the house has been vacant for three years and he thinks it is a great use for the property.

G. Smith said based on his interpretation of the home occupation regulations, he does not see how this comes close to qualifying.

W. Reese referred to the home occupation definition and said a home occupation must meet the following criteria: the occupation or profession must be one which is customarily conducted in a dwelling. She stated she does not think that this one would, but it is up to the Board's determination as to whether or not it would fit.

R. Cook said it is the business. He said no one says you can't grow anything and the growing of the grapes is not the issue. He said the question is, "does the business take place inside there?" He said they crush the grapes, bottle and ferment and sell it in the building. He then asked the question "can you sell stuff out of your house as a home occupation?" He then answered, "you can, but we are limited as to what that scope is." He said it is clear to him, but he told the applicant there was this avenue to come before the Board.

L. Orbach had a few questions. He said under Section 165-100b of the Town Code, he wondered if the applicant needed to start at the Planning Board for a recommendation.

R. Cook stated no and said interpretations do not go to the Planning Board first.

W. Reese said she asked the attorney for the Town and he said no. She said the applicant has not requested approval for a home occupation; they are requesting interpretation whether or not it is a home occupation.

G. Smith confirmed it was not in an approved agricultural district.

L. Orbach inquired what is meant by, it does not meet the requirements for Ag & Markets law?

R. Cook said there is not enough land and it is not in a State certified agricultural district. He stated it is not that it couldn't be because there is other land near there that was added to the agricultural district. He said it is near the Hazer farm that was included.

W. Reese said essentially there were two ways for it to fit within the RA district. She said it either had to be farm and farming and under the Code the definition of farms requires 15 acres or it has to be a home occupation which by definition includes customarily conducted in the dwelling and the other requirements.

L. Orbach inquired where in the code does it say that farming must be conducted on a farm? He said he saw the 15 acre requirement for a farm but he did not see it expressly incorporated into the definition of farming.

W. Reese said it is up to interpretation by the Board but they have looked at it as farm and farming, not either/or but as a conjunction.

L. Orbach said the definition of farming expressly includes processing, storage and sale of agricultural commodities including specifically vine and grape products. He stated he thought they should be cautious before they interpret home occupations to include something that is specifically defined as farming and precluded under the Code as farming.

W. Reese said they are before the Board to ask for an interpretation of whether their proposal would fit under a home occupation or a farm/farming allowance under the RA district.

G. Smith asked W. Reese to go over the other requirements under home occupation.

W. Reese said they were:

- The occupation or profession must be carried on by a member or members of the family who reside in the dwelling.
- The occupation or profession must be incidental and secondary to the use of the dwelling.
- The occupation or profession must be carried on entirely within the dwelling.
- There shall be no exterior alteration of the structure, or exterior display, or exterior storage, or other visible evidence of the operation of the home occupation.
- There shall be no signs or other visible evidence of the home occupation.
- There shall be no offensive odor, fumes, noise, vibration, dust, heat, etc.

L. Orbach asked, if the Board was to interpret home occupation not to include this, could the applicant apply for an area variance because farming is a permitted use but they do not have enough acreage?

W. Reese said to do a farm on 5 acres as opposed to 15 that it would be an area variance.

R. Cook said in the broadest sense, yes, it would be.

G. Smith stated R. Cook gave his opinion, but the applicant has the right to come to the Zoning Board of Appeals and see if the Board agrees with what the Code Enforcement Officer says or do they have a different interpretation.

L. Orbach said his understanding is the Code Enforcement Officer has interpreted it to not be a home occupation.

R. Cook confirmed. He said he would look at it as being a use variance, if the applicant was seeking a variance.

W. Reese said they have not asked for a variance at this point. The applicant has asked for a determination as to whether or not their proposed use is an allowable use under the Code. She said the Code Enforcement Officer has determined it is not and they are asking the Board to make an interpretation of the Code as to whether or not it actually is.

D. Silverman stated unfortunately, he did not see it being very close to a home occupation. He said what the Code permits under home occupation is very limited and it would be very far-stretched. He said as a community and State they encourage these type of businesses but it needs to be in an area where you are able to grow when, hopefully, it takes off. He said availability of additional land would be needed in order to conduct a business.

R. Cook referred to section 165-72 and said farms under special use permits, when the land is not in a State certified agricultural district it lays out other criteria the parcel would have to meet. He said the one that sticks out is no retail sales. He said when you look at the definition of farm and farming, even though

farming allows you to produce products like grapes for wine, but when you are not in an agricultural district, there are no retail sales.

G. Smith said he felt it would stretch the home occupation definition far. He said listening to what the Board is saying, he thinks they agree with Roger's interpretation.

D. Silverman stated he did agree with Roger's determination.

L. Orbach said he did agree and said the Town has specifically included the activity in the definition of farming and sets forth home occupation as something distinct from farming.

M. Biviano said he approached the neighbor to sell, but he was not interested in selling.

G. Smith mentioned to the applicant maybe he could find 15 acres someplace else.

M. Biviano said it is a nice property for the use, an attractive building and it has a lot of character

W. Reese recommended the Board make a motion.

Motion by R. Sheridan, seconded by D. Silverman to affirm the Code Enforcement Officer's interpretation that the proposed use does not fit within a home occupation and it is upheld by the Zoning Board of Appeals was carried unanimously.

M. Biviano inquired if he got the property in an agricultural district could it be a special use permit?

R. Cook said then, he thinks it changes.

G. Smith said based on the requirements for an agricultural district, the applicant does not come close. He suggested the applicant look up the requirements and said they are fairly specific.

M. Biviano said there is neighboring land that is agricultural and is prime farmland on the "charts." He inquired if it is prime farmland, why wouldn't the State of New York want to grow things on it?

G. Smith said he did not think it stopped him from growing things on it, it just stops him from being classified as a farm.

R. Cook said the agricultural overlay district is a floating zone which is how the Oweria Winery will operate. He stated they met all the criteria. He stated you still need 15 contiguous acres of property. He said the way he interprets the farming law is to get into anything that gets the applicant away from the restrictive zone, you have to be in an agricultural district and have 15 acres which is the "magic" number.

Motion by R. Sheridan, seconded by D. Silverman to adjourn the meeting was carried unanimously at 8:18 p.m.

Zoning Board of Appeals Secretary – Connie Sunderman – November 29, 2012