

2577 US Route 11
P.O. Box 193
LaFayette, NY 13084



Date: September 26, 2017

Time: 7:00 pm

Location: LaFayette Town Offices

Zoning Board Meeting

Meeting called by: LaFayette Zoning Board

Facilitator: Christine Keenan

Note taker: Sue Marzo

Attendees: Zoning board members: Karl Field, Christine Keenan, Jerry Marzo, Anita Miner, *absent James Nash*

John Langey, Town Counsel, Sue Marzo, Secretary, Steve Pitoniak, Rosemary Brodt, Herbie Brodt, Martin Ossenberg, Melanie Palmer, Ralph Lamson, Carole Dwyer

Minutes

Agenda item: Courtesy Public Hearing for the interpretation of a paragraph of the zoning law and a definition of the word "accessory" with regard to a Determination of Code Enforcement Officer, Ralph Lamson's letter dated May 30, 2017 regarding a building permit for the proposed manure pit storage facility located at the end of Markland Rd. LaFayette, NY

Discussion:

Meeting was called to order at 7:00 pm by Christine Keenan of the Zoning Board of Appeals. Motion was made to accept the minutes of August 22, 2017 by Jerry Marzo. All board members present voted in favor and approved the minutes as written.

Christine Keenan stated that we are ready to continue with the public hearing from last month. Does anyone wish to speak? Does anyone have anything further to say? Ralph Lamson stated that at the last hearing, he was told he was wrong about use of greenhouses and dog houses as accessory uses. I can't use someone else's town zoning ordinance. Section 1A barns and farming and accessory uses included but not limited to greenhouses and dog houses. That wasn't something I made up. This came right out of our zoning ordinance. Melanie Palmer was asked if she had any comment. Melanie replied, "not at this time".

Steve Pitoniak stated that they did not make up that definition but it was taken from many other town ordinances as well as several court cases and supreme court cases. He provided a list of examples that supported his position. It is not something that I made up and I provided evidence. Several pages were provided at the last meeting. There are court cases that I could also supply, if necessary.

Martin Ossenberg stated that in the draft minutes I read the interpretation of the word accessory use or structure. I wanted to ask if you referenced a certain article in the paragraph in the zoning ordinance. I became concerned because on page 56 of the zoning ordinance there are two definitions of the word accessory. I wonder if you aware of that. Christine Keenan does not have page numbers. She asked for the Article, Section and paragraph he was referring to. Mr. Ossenberg supplied Page #56 Section 2, Article 7. Christine Keenan stated we might have two different definitions and we have two versions of the ordinance in circulation. November 10, 2014 was confirmed to be the latest version. It troubled Mr. Ossenberg that the draft minutes did not cover the explanation on page 56. Hopefully you will correct the draft minutes to include this section. Christine Keenan advised that our code is in process of being updated by the Town Board. She asked for more input and advised this was the last chance for comment at the Public Hearing.

The Public Hearing was closed at 7:11 pm.

Further conversation by Christine Keenan stated our actual task here is very narrow. We were asked to define the accessory use or accessory building. I believe that the definition is right is in the ordinance Article 8, Section B, Paragraph 1. It seems very straightforward.

“ACCESSORY BUILDING OR USE: A building or use customarily incidental and subordinate to the principal use or building and located in the same lot with such principal use or building. “

The Zoning Board of Appeals was asked to define this. There is the definition. Karl Field asked do we agree with what the ordinance states as the use? Christine Keenan asked if the definition in the article is that how we define an accessory use or structure? Karl Field, Anita Miner, Jerry Marzo and Christine Keenan all publicly agreed with what the ordinance states. That is how we define accessory structure. Secondly,

Article 7, Section B, Paragraph 6 states:

“Building Permits and Certificate of Occupancy shall not be required for construction or alteration of customary accessory farm structures, appurtenant or necessary to an existing farm operation, not used for dwelling purposes and having a value of less than \$5,000.00, provided that such accessory structures comply with the provisions of this Ordinance and other requirements of law applicable thereto. (As Amended)”

We are being asked does this manure lagoon qualify as a customary accessory structure? The ZBA agrees that yes, it does. Assuming the value is well over \$5,000, therefore a building permit should have been requested. All board members agreed a building permit should have been required. Ralph Lamson disagreed and stated it did not require one because of the NYS Building Code. John Langey stated that the state has their own set of rules. This is not easy picking. We had to reach out to lawyers and to Ag & Markets. Christine Keenan stated this is complex and this paragraph is straightforward. It seems that a building permit should be required. John Langey stated agencies are involved and they responded. In this case, we did it in writing that they looked specifically at this interpretation. It is their opinion and that of Ag and Markets that our law is not unreasonable to the farmer to require a building permit if it is not unreasonable to obtain the building permit. We cannot restrict the farming operation. NYS stated that bottom line the code and section of the law does not control how the lagoon is constructed. They are ok if we were to require a building permit. It does not violate our laws. Ag and Markets and Dept. of State have no problem with the language of our ordinance as it pertains to accessory structures to farm. Christine Keenan states

this means we can require a building permit if we choose as long as it is not unreasonably expensive or takes too long. John Langey states, it is up to Ralph Lamson if it is going to be required as he would have to do it. Christine Keenan, states basically, we have said that it appears to us that this building permit certificate of occupancy could have been required and is ok with Department of State and Ag and Markets and we could do that.

John Langey consistent with my knowledge and John Langey has a lot of experience, it is already 100% installed. The town does not have a code that regulates how these things are constructed. Part of the DOS is they don't have a problem with our code because it doesn't tell anyone what the standards are. There is nothing on the construction piece that Ralph Lamson could try to enforce. He would have to be a lot smarter than me to know if this construction is ok. We rely on soil and water. The town's ability is somewhat limited. We cannot pass laws about construction standards.

Carole Dwyer asked if we had testimony from the farmer that it met the standards. Based on what the farmer said, professional engineers designed the structure. Ralph Lamson stated Soil and Water and DEC oversee it. Christine Keenan stated those regulatory agencies did approve it. You could probably check with them to be sure. John Langey stated they have their own enforcement arm over there. Christine Keenan stated there are many levels of government.

Martin Ossenberg stated that the draft minutes refer to my commentary that the NYS DEC requires all construction facilities to meet the standards of NRCS-NY 313 issued in October 2014. When you read that regulation, you will find that it refers to the agricultural waste field handbook and those are the standards. They are brought down to the state and the state enforces those standards. There are a clear set of rules and regulations that the farmer or any agricultural operation must be in compliance with. The town for practical reasons can retain the authority and they can simply demand that the construction is being supervised by licensed laboratories, engineers taking soil samples of permeability of the soil and therefore controls the rule which the USDA is adamant about. Unless you meet that standard, you are forced to come up with a liner. If you are required to put a liner in the storage facility then the town has every right to look at the result of the tests and take soil samples assuring this facility meets the standard. Christine Keenan has reminded Mr. Ossenberg that the public hearing was closed and that the town does not oversee this, the agencies do.

Christine Keenan asked if the board members had read the resolution. Jerry Marzo asked John Langey where the \$5,000 comes from in the zoning ordinance. This is what it has

been all along since the ordinance was written. Christine Keenan asked if the board had any questions, does it say what we want it to say? Karl Field asked, do we know that the state and the DEC have looked at the preparation? Christine Keenan asked John Langey, "do we need to get proof of that"? John Langey replied that we were asked to make an interpretation. Christine Keenan advised that the agencies should be doing their job and it is not our job as a board to supervise. Karl Field asked if we can include that as our interpretation for compliance? John Langey stated that is not an interpretative position of the board. We were asked to tell the applicants what the provision means and the context? All we know is what the two farmers have told us they have done. Carol Dwyer asked if that could be added as a reference to support the definition. John Langey replied that he was not sure how that fits into what the board has been asked to do. Christine Keenan stated that the function of the ZBA is very narrow we grant or deny variances and we interpret the town ordinance. In this case, we had been asked to interpret a paragraph of this ordinance. We don't do anything else including enforcement, people are not under oath. John Langey stated, it is part of the public record. It will be in the minutes. The function is limited. We record all your comments about the standards and who has looked at it and who hasn't. All that information is in the record and it is a matter of public review.

Herbert Brodt asked if they had gone to the state on this pit since it was moved? Did they reapply after moving the pit? Christine Keenan advised this is not the purview of this board. The public hearing is closed. We need to maintain some kind of structure.

John Langey advised that the Chair is answering a specific question referenced by the applicant that wrote the letter. The ZBA has discussed that and the guidance and legal options of the validity of the section of the law and the Dept. of State is in the resolution and basically answers the questions that were asked.

Christine Keenan asked the board if they had any more questions. John Langey advised this is a type 2 action under SEQR it is not going to impact the environment. The board took some time to read the resolution. All board members are in agreement with the resolution as it represents our interpretation. Motion to accept this resolution. Jerry Marzo made a motion to accept the interpretation as written, all other board members in attendance accepted the resolution also. Motion is carried and resolution is accepted as written.

Christine closed by stating that the ZBA has a very narrow purview. Steve Pitoniak mentioned that he still does not understand the interpretation in everyday language. Mr.

Langey told the applicant he would talk to him after the meeting closed and explain further.

Motion to adjourn was made at 7:37pm.

Respectfully submitted,

Sue Marzo
Zoning Board Secretary

