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P.O. Box 134, 7209 Rte. 28, Shandaken, NY 12480

Town of Shandaken Zoning Board of Appeals

MINUTES FOR PUBLIC HEARING & REGULAR MEETING

November 18, 2015

The Public Hearing was opened by Board Chair Johnson at 7:30pm with the pledge of allegiance.

Roll called by Planning Board Secretary Anne Ricciardella, and attendance was recorded as follows:

Keith Johnson, Chair	Present
Rolf Reiss	Present
Joseph Michaels	Present
Gary Guglielmetti	Present
Mark Loete	Present

Roll call summary: 5 present

Others present: Alfred Higley
Jeffrey Bailey
Mr. Wolinsky (Town lawyer)
Mr. Wellner (Higley's lawyer)
Tim Malloy

Chair Johnson inquired about correspondence from the Department of Transportation regarding Hanover Farms and the letter was read aloud by Board secretary Anne Ricciardella. It stated that the site plan that was submitted on 9-15-15 was approved for use. The Board then invited Don Brewer, surveyor of Hanover Farms, to present maps to the Board for better visual and go over. Some discussion from the Board about how the structure was built illegally and if the variance is granted then they'd be rewarding bad behavior. Mr. Wolinsky states that all structures that require a variance are technically illegal and the only way to remedy that would be to apply with the ZBA and have them approved.

There are certain things that are required of the Board while deliberating a variance. Setting a precedent can't be a reason to deny it. The Board can grant, deny, or grant with conditions. They must weigh the benefit of the applicant with the detriment to the community and environment. The four variances that are being applied for are:

1. 114-40 T(1): Variance from Farm Stand Accessory Use Area Limitation allowed 2,686.0 sq. ft. Existing farm stand, including structures and parking lot, is 5,700.7 sq. ft.
 - Variance sought is for an additional 3,014 sq. ft.
2. 114-40 T(2): Variance from the requirement that Farm Stand structures cannot be closer than 20' to the street line.
 - Variance sought is for a 0' setback.
3. 116-16B (2)(B): Variance from the requirement that structures must be set back a minimum of 10' from lot lines.
 - Variance sought is for a 0' setback from the lot line abutting the road for the farm stand structure.
4. 116-16B (2)(D): Variance from the requirement that no structure shall project closer to the fronting street than the principal building on the lot or a distance of 50 feet, whichever is less.
 - Variance sought is for a 0' setback from the fronting street for the farm stand structure.

There being no questions or comments from the gallery Chair Johnson made a motion to close the Public Hearing and seconded by Board Member Michaels. The Public Hearing was closed at 8PM.

The Board is free to further discuss Hanover Farms. They reviewed the maps together and found that the overhang comes out 3.2 feet on to State property, but was noted on the map that, that will be changed. There is no requirement stating that all of the square footage requested must be used. Mr. Higley was asked by the Board to agree to a 10 foot setback. They don't want him to move the building, just to suck the wall back in. Mr. Higley and his lawyer leave the room to discuss in private. They decided that they're unable to accommodate the Board's request as Mr. Higley feels that they've asked him to take a large part of the Farm Stand that makes it a road side Farm Stand out. The pavilion is 10 feet, the structure and roof would be lost and Mr. Higley doesn't want to remove it. He told the Board that the renovation was done in 2006 and he feels that the Farm Stand wouldn't be able to run without it.

The Board then continues discussing and deliberating. Members addressed Higley and stated that they were looking for some balance by requesting the 10 foot setback for building the structure without permits or the proper procedures followed. Mr. Wolinsky reminds the Board that to bring them into compliance with the courts is to either grant the variances or reduce the offending size to what the current code is. Mr. Wellner stated if the variances are granted as requested then the Farm Stand can operate, if they're granted with a 10' setback, from an engineer's perspective it'll have to be torn down, and if they're denied then the farm stand would also be torn down. He also informed the Board if they're trying to punish Mr. Higley for not beginning the process in the right way, the court case and litigation is sufficient enough and that the purpose of this meeting is to go over the variances. There is still currently a pending decision from the Court about the penalties and amount of fines he'll need to pay.

Board Member Johnson then makes a motion to accept the four variances as is, with the drafted decision written by Mr. Wolinsky under the conditions that, he pays what the Court remands, Planning Board site plan approval, and the overhang be removed, and that no part of the structure can encroach beyond the property line.

Roll Call Vote:

Keith Johnson, Chair-	Yes
Rolf Reiss-	No
Mark Loete-	No
Joe Michaels-	Yes

Mr. Wolinsky then reminded the Board that because the County didn't respond within 30 days of the new application being submitted on 10-8-15, pursuant to General Municipal Law that they were able to take that action. No further questions regarding Hanover Farms.

Communications: None

New Business:

Jeffrey Bailey approaches Board to introduce them to the Glass Mountain Inn located at 108-110 Route 214, Phoenicia. Mr. Bailey's lawyer Mr. Futerfas was also present to address the Board. He informed the Board that Mr. Bailey is seeking a variance for his property, to use for short term rentals rather than long term. Due to the change in use, the pre-existing non-conforming required them to come before the ZBA. Weighing the benefit to applicant with the detriment to the community, he doesn't see a negative impact. Mr. Bailey and his wife currently reside on the property also, so they'll be present for all transient rentals. Most people come in by bus, or use one car. As it stands in the zoning code, there is no set category for what's being proposed. The Planning Board decided the closest thing was a cabin/cottage development. As described in the Shandaken Town Code, there are 5 requirements that must be met. So far the first 4 out of the 5 have been met, which is what brings us to the variance. Pursuant to Town Code §116-40 E (5), that no building or recreational facility associated with such development shall be located nearer than 100 feet to any lot line, and any such building or recreational facility shall be effectively screened from adjacent properties. His property is too close to Ms. Karen Miller's. It is a permitted use with a special permit, which will be granted pending this decision. The Board reviewed the application and with no further questions, Board Member Reiss made a motion to send the application to Public Hearing for the next ZBA meeting on Wednesday, December 16, 2015 and seconded by Board Member Loete.

Other Business: None

Adjournment:

There being no further business before the Board, a motion was made for adjournment by Board Member Reiss, seconded by Board Member Michaels. The ZBA meeting adjourned at 9 PM.

