

TOWN OF CLARKSON – ZONING BOARD OF APPEALS

Minutes – October 1, 2008 / Amended October 15, 2008

PRESENT – Board Members

Conrad Ziarniak - Chairperson
Wade Radtke *
Paul Dittman
Rick Sheffer
Jackie Smith

Support Board Members

Ursula M. Liotta, Dep. Town Clerk
Richard Olson, Town Attorney *
Larry Gursslin, Code Enforcement *

Excused *

CALL TO ORDER

C. Ziarniak called the meeting to order at 7:00 pm, led all present with the Pledge of Allegiance, and reviewed the Agenda.

PUBLIC HEARING None

OLD BUSINESS

1. **Michael Scarpulla**, 8089 West Ridge Road
Review of Instrument Survey re: placement of roadside sign (per N/D - 9/3/08)

M. Scarpulla (not present) provided U. Liotta with a copy of the instrument survey map that he was given at the time of his real estate closing. The map shows the roadside sign as being partially in the NYS right-of-way, and that was not this Board's understanding at the time the Notice of Decision was rendered on September 3, 2008. U. Liotta was asked to find the most recent OnTrac file to verify that the placement of the John Deere sign was within the property line; that it would be further reviewed at the next meeting.

NEW BUSINESS None

OPEN FORUM

1. **John Kiba**, 8354 Ridge Road, Tax Acct. #054.14-1-6.11
Zoned: Highway Commercial (historic district), 1.98 acres
Possible Request for a Use Variance (no application submitted)

J. Kiba introduced himself and described the physical location of his home on Ridge Road; that he thought the home was zoned residential when he originally purchased it, but it is zoned highway commercial; he says that the property actually falls under "customary agriculture use"; that if he applies for a use variance, it would limit its use.

J. Kiba gave a brief history of the house and talked about the trees on the property; J. Kiba stated that L. Gursslin will walk the property with him; that he is looking to defend the complaint; that he has a defense for the "customary agriculture use".

C. Ziarniak asked J. Kiba how long he has lived in the home; J. Kiba stated since July 2008. C. Ziarniak stated that the property is zoned highway commercial; that poultry are not allowed; that L. Gursslin issued the code violation based on those facts. J. Kiba's stated that his intent is to ask the court to dismiss the charge based on "customary agriculture use".

C. Ziarniak asked J. Kiba how many poultry are on the premises: twenty-one (21) birds total, i.e. two (2) geese, four (4) turkeys, one (1) rooster, and the balance are bantam chickens.

J. Kiba provided his interpretation of several legal issues that he felt pertained to his situation. He referred to a pending court date on October 27, 2008 where he would be presenting his interpretation of these issues to the Town Court Justice. C. Ziarniak explained to J. Kiba that he is speaking on a lot of legal issues that are not in the ZBA's area of jurisdiction. If the code inspector makes a determination, then J. Kiba could appeal the determination to the ZBA. It will be very difficult to prove a "use variance". C. Ziarniak explained the criteria for a use variance, and that he could not remember ever granting one during his time on the Board. Applicant must

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submit a variance application before the Board can get involved. J. Kiba stated that L. Gurslin told him to inform the ZBA in the meantime of his intentions. J. Kiba believes that “non-conforming use” is applicable to all zoning. He doesn’t believe that the property is conducive to highway commercial.

J. Kiba stated that he would ask to have the “use variance” application fee waived. C. Ziarniak explained to J. Kiba that the application fee is necessary to cover the cost of the public hearing notification to be published in the newspaper.

C. Ziarniak inquired regarding the upkeep of the 21 birds since his property is less than two (2) acres. J. Kiba explained that according to American Poultry Show rules, all that is needed is one (1) cubic foot for roosting area per bird, but he has much more than that; that they are territorial animals and are free during the day, but are cooped up at night; that they are show animals and his children’s pets.

That he is working on proper fencing for the yard and is working with the neighbors, and proposes a letter of agreement between he and the neighbors. C. Ziarniak stated that he will review the code further, and that we need to find out what L. Gurslin’s determination will be.

C. Ziarniak stressed that the chickens “escaping” is a safety issue, and he wants to be assured that it is not a hazard on Ridge Road; that it will need to be addressed if he applies for a use variance.

J. Kiba stated that he thinks that the chickens can be contained; that he will make the fence higher if needed. J. Kiba stated that he hopes to have L. Gurslin on board and hopes that the Judge will grant a dismissal.

OTHER: U. Liotta will ask Pam Dolliver, Assessor, for her input regarding the variance questions that were raised at the meeting on September 17, 2008.

REVIEW OF MEETING MINUTES from September 17, 2008

C. Ziarniak made a motion to approve the minutes; second by J. Smith.

Ayes: Ziarniak, Smith, Sheffer, Radtke

Abstain: Dittman as he was absent from the meeting

ADJOURNMENT

C. Ziarniak made a motion to adjourn at 8:02 p.m.; seconded by P. Dittman; unanimously carried.

NEXT MEETING: October 15, 2008

APPROVED 11/5/08

Respectfully Submitted,

Ursula M. Liotta
Deputy Town Clerk