

# TOWN OF CLARKSON – ZONING BOARD OF APPEALS

October 20, 2010

## PRESENT – Board Members

Conrad Ziarniak - Chairperson  
Paul Dittman  
Jackie Smith  
Scott G. Tantalo  
Michael Beadling

## Support Board Members

Richard Olson, Town Attorney \*  
Chad Fabry, Code Enforcement \*  
Ursula M. Liotta, Building Dept. Coordinator

Excused \*

## CALL TO ORDER:

C. Ziarniak opened the meeting at 7:00 p.m., led all present in the Pledge of Allegiance, and reviewed the agenda.

## OPEN FORUM:

**Timothy Hall**, property owner and **Jeffrey Besse**, tenant  
2997 Sweden Walker Road, Tax ID #041.03-1-11.2, Zoned RS-20  
Discuss new fence along front property lot line

J. Besse was unable to attend. C. Ziarniak requested T. Hall to describe the reasons for the fence and what was occurring on his property, which is summarized in part, as follows:

- T. Hall is the property owner and resides at the property. J. Besse is a tenant, and has resided at the property since T. Hall's purchase. There is no lease between T. Hall and J. Besse. (*Note: T. Hall purchased the property in June, 2007, as verified by the records in the Assessor's Office.*)
- T. Hall stated that about two years ago, J. Besse asked if he could keep seven birds at the property as a hobby. T. Hall allowed the seven birds, but the numbers and types of animals have steadily increased since that time; that J. Besse told T. Hall that he intends to sell eggs and chickens.
- T. Hall estimates the number of animals to be more than 75, including, emus, pheasants, ducks, geese, peacocks, goats, rabbits; that J. Besse is also breeding some of the fowl.
- Based on the instrument survey provided to the Board, the house is approximately 126' from the right-of-way; that there is a 24' x 40' pole barn on the southwest side of the house; that J. Besse has built an addition to the pole barn, and has also built 4 or 5 separate utility buildings approximately 50 yards back from the house in the backyard; that T. Hall estimates that the utility buildings are 12' x 12' in size.
- The Board questioned if building permit(s) were obtained for the utility structures; that T. Hall would have had to apply for the permits as the homeowner. T. Hall stated that he only signed for the most recent fence permit. (*Note: The Board will ask C. Fabry to verify the size of each additional structure. Town Code states that any structure up to and including 144 sq. ft. gross area does not require a permit.*)
- Further, based on the instrument survey, the property is almost 11 acres, with more than ½ of the property wooded (to the West) and a drainage easement to the South.
- C. Ziarniak inquired as to farm-related practices currently undertaken on the property, i.e. growing of corn, grain or hay, plowing/planting of fields, production of fruits or vegetables, etc. T. Hall stated that nothing else is happening on the premises to his knowledge. J. Besse is not growing feed, nor is he growing produce.
- C. Ziarniak stated that the issue at hand is the fence that has already been installed in the front of the property; that he understands it was installed in an attempt to prevent the animals from entering the roadway. Building Department Coordinator, U. Liotta, was asked about instances where there have been birds in the road. She verified this, and stated that there have been a number of complaints to the Building Department by motorists regarding the animals in or near the road and the fear of car accidents; and that the animals were being a nuisance to the neighbors.
- T. Hall described the fencing as a 4' white vinyl fence that spans the entire width of the property in the front except for the driveway entrance. The Board pointed out that since the driveway area remains open, the fence's effect is neutralized since the animals can travel down the driveway into the roadway. From observation, the Board characterized the fence construction as virtually solid vinyl panels, with no gaps. T. Hall stated that there is mesh fencing on the E and W sides of the property extending from the white fence; that the purpose of the fence is to keep the animals "in", and if it had not been installed, T. Hall understood that the Town would take action.
- C. Ziarniak stated that the matter to be determined is if this is an "open" fence for agricultural purposes. The Board inquired as to the height of the fence panels and posts. (*Note: The Board will ask C. Fabry to verify that the fence is a 4' or 48" tall vinyl picket fence, and to measure the height of the posts above the top rail.*)

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- C. Ziarniak further stated that “farm use” is an allowed use in RS-20 zoning however, it is not clear what the intended use is at this property.
- The Board has concerns that J. Besse has not fully thought through what he is trying to do at the property and T. Hall stated that it is not clear to him either. C. Ziarniak stated that T. Hall, as property owner, is responsible for the activities on this property, and he bears the responsibility of his tenant’s actions. He should manage and control the situation to prevent motor vehicle accidents or injury to the animals, in addition to preserving the residential nature of his property and neighboring properties.
- The Board is not opposed to any type of farm activities that are well-managed, however, it does not appear that J. Besse’s activities at the property are well-managed; not only does this pose to passing motor vehicle traffic, but also a hazard to the animals. The primary use of the property is residential. C. Ziarniak gave the example of the property owner on Ridge Road who requested an area variance for a horse barn; that the Board was concerned with how the horses and their care would infringe on the neighbors.
- C. Ziarniak asked T. Hall to consider developing and presenting to the Town, a well-managed plan indicating where the animals are housed, whether they are free-range, and how they are being kept out of the road. Also, to disclose the purpose for keeping these animals and to project the full extent in the future.
- C. Ziarniak stated that the property is primarily a residence and feels that the fence is not in keeping with the character of the neighborhood. If the Board determines that this is not an “open” fence for agricultural purposes, then there are two options: (1) apply for an area variance for the 1’ size difference in the fence per what code allows [§140-14(A)], or (2) remove the fence and relocate it to behind the front setback of the house [§140-14(B)]. C. Ziarniak stated that he would not be in favor of granting an area variance for the fence as it currently exists. Relocating it behind the home would insure that the animals would be more adequately contained.

C. Ziarniak made a motion as follows: This Board has determined that the fence as it exists now, is not an “open fence for the purpose of enclosing farmland, horses, cattle and other farm animals” per §140-14(C), and considering the residential nature of the area, the primary use of the property as a residence, the uncertain nature of the use as described, and that the current implementation of the fence is not an enclosure (since the driveway area remains open) and therefore is ineffective in preventing animals from entering the roadway. Second by S. Tantalo; unanimously carried.

**OLD BUSINESS:**

**Daniel Hale**, 2176 Lake Rd. – status report  
Paved driveway matter diaried to 9.30.10

As a follow-up to the ZBA minutes dated August 19, 2010, U. Liotta reported that she confirmed with the office manager at the 2176 Lake Road address, that the parking lot on the West side of the building was paved six weeks ago; verified by C. Fabry. File closed.

**REVIEW OF MEETING MINUTES:** September 1, 2010

C. Ziarniak made a motion to approve the minutes; second by P. Dittman; unanimously carried.

**NEXT MEETING:** November 3, 2010 at 7:00 p.m.

**ADJOURNMENT:** C. Ziarniak made a motion to adjourn at 8:15 p.m.; second by J. Smith; unanimously carried.

**Approved 11-3-10**

Respectfully Submitted,

Ursula M. Liotta,  
Administrative Assistant