

TOWN OF CLARKSON – ZONING BOARD OF APPEALS

November 3, 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 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
Re: Possible Area Variance Application

C. Ziarniak reviewed this issue from the last meeting held on October 20, 2010 regarding a fence erected along the front property line. At that time, T. Hall (property owner) was present, and the Board reviewed the information with him. Further, the Board discussed whether the fence was an open fence per §140-14 (c) and the Board determined that it is not “*an open fence for the purpose of enclosing farmland, horses, cattle and other farm animals*” due to the fact that the fence did not provide a continuous perimeter, among other reasons.

Further, T. Hall inquired about an area variance for the height of the fence, and he took an application with him from that meeting. The Board understood that J. Besse was present this evening with regard to the area variance application.

J. Besse stated that he was not present with regard to the area variance application; that he had been given incorrect information about the last meeting date, and understood it to be adjourned until tonight; that he didn't understand why the ZBA met with T. Hall at all since he is not involved with any of his activities at the property. C. Fabry stated that he contributed to the meeting date confusion by inadvertently advising T. Hall and J. Besse of the wrong date for the ZBA meeting.

C. Ziarniak stated that according to the County of Monroe records, T. Hall owns the property, and T. Hall himself described J. Besse as a tenant. J. Besse stated that he and T. Hall are both owners of the property, although the deed and the mortgage say otherwise.

C. Ziarniak stated that in the course of the ZBA meeting on October 20, 2010, the Board reviewed the information provided by T. Hall and from the Building Department and felt they had sufficient information to make their decision as noted above. J. Besse stated that the ZBA made its determination without the necessary party, him, being present. C. Ziarniak stated that the Board had already made its decision. The next step would be for the property owner to submit an area variance application for the Board to consider.

J. Besse stated that the fence will not be removed and no area variance would be applied for; that he will take this matter to court based on two sections of Clarkson Town Code; that he is confident that the fence will be allowed.

C. Ziarniak reiterated that the Board had already made its decision, but offered J. Besse an opportunity to explain his position. J. Besse stated that C. Fabry asked him to put up a fence to keep the animals from getting too close to the road and that it was his intent all along to install a 4' fence.

C. Ziarniak stated that the fence is in the front of the home and it is over three feet tall; that under §140-14 (a) open fences along the front property line “*shall not be higher than three feet above the adjacent ground level.*” J. Besse stated that the fence is lower than the adjacent land (and offered the definition of “adjacent” to mean “near” or “close”) since the lot slopes down the swale to the East causing the four foot fence to be to within the three foot height. C. Ziarniak stated that in his 15+ years serving on the ZBA, he has never heard of anyone attempting to determine fence height in this manner and that J. Besse's argument would not sway the Board's decision.

Discussion was had regarding what types of animals are on the property, what types of animals are considered to be farm animals, and what types of animals are used as products. The Board stated that any definitions used should be from the Town Code, and not from a dictionary. C. Fabry stated that NYS law

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defines a farm to be ten acres or more with revenue of \$10,000/year or more. J. Besse stated that his revenue is more than \$10,000/year.

J. Besse stated that the property is a farm, although it is not a huge farm and the animals on the property are farm animals; that he has a business at the property; that he mainly sells eggs, chicks, and rabbits to pet shops. He stated that a lot of the birds have gone near the road in the past; that the new fence clearly falls under §104-14 (c) “*Open fences for the purpose of enclosing farmland, horses, cattle and other farm animals shall not exceed eight feet in height above ground level.*” since it is doing exactly what the town asked, i.e. to keep the animals from getting near the road. J. Besse stated that the fence goes across the front of the property until it gets to the brush on both sides; that nylon mesh fencing hangs across the driveway to close it off. C. Ziarniak added that the Board is concerned with the safety of motorists as well as the safety of the animals.

C. Ziarniak stated that the Board has questions about the use and maintenance of the farm. J. Besse was asked if he had a plan re: the management of the animals, (feeding, housing, waste disposal, etc.). J. Besse stated that he has had prior farming business experience with his family. He has chips delivered 1x per week and he recycles the manure; that the property is kept up very nicely; that the other two tenants living at the property help out with the chores, as does his sister and her family while he is away. Many people stop to visit and tour the property, i.e. schools and assisted living; that C. Fabry, the DEC, and the Humane Society have been at the property.

The Board verified that the building permit for the fence was applied for by J. Besse, however, T. Hall, as property owner, was required to sign the Work Comp Affidavit to allow the work to be completed. The property is zoned RS-20 (residential suburban), and farm use is allowed. Based on the info J. Besse has given to the Board, there is nothing that changes the Board’s decision.

The Board asked about moving the fence to the backyard instead of the front yard; that if it is not moved behind the front setback, the owner needs to apply for an area variance. C. Ziarniak stated that he would favor the fence be relocated to the back versus an area variance because it could be re-configured as an enclosure and would be more effective in containing the animals and provide a higher degree of safety.

J. Besse stated that they (he and T. Hall) will not apply for an area variance. It is obvious to him that 1) the town told him to put up a fence; 2) that it was always intended to be a four foot fence, not a three foot fence; 3) that it is a livestock enclosure; 4) that the doctrine of collateral estoppel applies. J. Besse further stated that he has taped some of his conversations with the building department.

Further discussion ensued regarding the ability for the town to police the property to keep it under “control”. The Board requested that Town Attorney Richard Olson review this application, especially with regard to legal terms referenced by J. Besse (collateral estoppel).

OLD BUSINESS:

REVIEW OF MEETING MINUTES: October 20, 2010

The minutes were reviewed and amended. C. Ziarniak made a motion to approve the minutes as amended; second by S. Tantalio; unanimously carried.

NEXT MEETING: November 17, 2010 at 7:00 p.m.

ADJOURNMENT: C. Ziarniak made a motion to adjourn at 8:35 p.m.; second by J. Smith; unanimously carried.

Approved December 1, 2010

Respectfully Submitted,

Ursula M. Liotta,
Administrative Assistant