

February 22, 2010

The regular monthly meeting of the ZONING BOARD of APPEALS of the TOWN of CAMBRIA was called to order by John Reardon, Chairman, at 8:00 P.M. He welcomed everyone to the meeting followed by the Pledge to the Flag and then announced the agenda for this evening.

Members present: John Reardon, Chairman
Michael Bechtel, Theresa Kroening, Donald Robinson, Peter Smith
Also present: Clifford Burch, Building Inspector
Donald Lane, Deputy Building Inspector
Gary Billingsley, Attorney

Secretary read Notice of Public Hearing as it appeared in the Lockport Union Sun and Journal to consider the following applications:

(10-28-09) KENNETH POWLEY, KAREN POWLEY, DANIEL SCHULTZ and BETHANY SCHULTZ, 3941 Slusaric Road, North Tonawanda, N.Y. 14120, for a Use Variance to permit applicants to excavate and mine two ponds containing dimensions of 11 acres and 14 acres, respectively, upon premises due east of property commonly known as 4950 Upper Mountain Road located on the south side of the said Upper Mountain Road between Junction Road and Comstock Road in the Town of Cambria, and an Area Variance to construct both ponds 20 feet from the east side lot line of said premises, whereas the Zoning Ordinance does not permit excavation or mining in the Agricultural-Residential District of the Town of Cambria, and does not permit construction of ponds closer to a side lot line than 40 feet.

(02-04-10) ROBERT BUDDE and JENNIFER BUDDE, 5063 Saunders Settlement Road, Lockport N.Y. 14094, for an Area Variance to construct an addition to their said residence containing dimensions not larger than 24 feet by 28 feet approximately 27 feet from the road right-of-way, whereas the Zoning Ordinance does not permit construction of a residence or addition thereto closer to the road right-of-way than 60 feet.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to approve minutes of meeting of January 25, 2010 as presented. Unanimously approved, motion carried.

SPECIAL PERMIT and VARIANCE RENEWALS (current)

Pat Spina, 3278 Ridge Road, Ransomville, N.Y. 14131, Ransomville, N.Y. 14131
Extension of Variance for storage of fill and gravel at 3270 Ridge Road, Ransomville
Extension of Special Permit for vehicle repair at 3270 Ridge Road, Ransomville

Mr. Spina was present at this meeting and said he would like the aforementioned renewed and wishes no changes in the business.

Building Inspector said there have been no complaints on the business.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to **renew** Variance for storage of fill and gravel at 3270 Ridge Road and to **renew** Special Permit for vehicle repair at 3270 Ridge Road, Ransomville, for a period of five (5) years. Unanimously approved, motion carried.

1999-01 (12-28-98) Timothy Swift, 4075 Lower River Road, Youngstown, N.Y. 14174
Special Permit to use a former residence at 4314 Church Road, Lockport, for a business office.

Mr. Swift was present at this meeting and said he would like to renew the Special Permit to use former residence at 4314 Church Road for a business office. He would like the renewal for a period of five years and requested no changes.

Mr. Swift also has a Variance for a mobile home which is used as a sales office at 4312 Church Road which was renewed in November 2009.

It was suggested to combine the two, Special Permit for 4314 Church Road and Variance for 4312 Church Road to come due for renewal at the same time, five years, October 2014.

A motion was made by Mr. Smith and seconded by Mr. Robinson to **renew Special Permit** to Timothy Swift for business office at 4314 Church Road and **renew Variance** for sales office at 4312 Church Road, which was renewed in November 2009 retroactive to October 2009, to both come due for renewal at the same time, for five (5) years, October 2014. Unanimously approved, motion carried.

2004-02 (02-02-04) Omnipoint Communications, Inc., T-Mobile USA, 103 Monarch Drive,
Liverpool, N.Y. 13088

Special Permit for co-location of personal wireless telecommunication service facility equipment upon an existing telecommunication tower upon premises at 4621 Ridge Road, Lockport 14094.

There was no one present on behalf of this Special Permit at this time.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to **table** action on renewal of Special Permit until the end of the agenda. Unanimously approved, motion carried.

2009-01 (12-31-08) Gary Bell, 4379 Plank Road, Lockport, N.Y. 14094
Special Permit for personal dog kennel

Mr. Bell was present at this meeting and requested no changes in the Special Permit.

Building Inspector said he had received no complaints on this Special Permit.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to **renew** Special Permit to Gary Bell for a personal dog kennel for a period of three (3) years. Unanimously approved, motion carried.

PUBLIC HEARINGS:

(10-28-09) KENNETH and KAREN POWLEY, DANIEL and BETHANY SCHULTZ were present at this meeting and have submitted Application for Use Variance to excavate and mine two (2) separate ponds on their properties on the south side of Upper Mountain Road, east of 4950 Upper Mountain Road, dimensions, approximately eleven (11) acres and fourteen (14) acres respectively.

They also are requesting an Area Variance to construct the two ponds approximately twenty (20) feet from the east side lot line.

The farm was owned by parents, James and Marian Powley, and was recently split into six (6) parcels for their children.

Mr. Powley said Bull Creek, Tennessee Gas and telephone lines run through the property. He said they have attempted to sell their property and were not successful and would like to do something with it for an income.

Mrs. Schultz, daughter of James and Marian Powley, said they would like to keep the property in the family.

Mr. Powley said a portion of the proposed pond area is in a flood plain and contains poorly drained soil and in the Spring, there is a high water table. A representative from Niagara County Soil and Water Conservation District looked at the area.

Public Hearing open:

Joyce Wienke, 4982 Upper Mountain Road, Lockport, expressed the following concerns: depth of these ponds? would these ponds create more mosquitoes? would there be fencing around pond areas? how do they plan to retrieve the clay? what type of operation would be involved? what time of year would this project be done? and what type of equipment would be used?

Chad Mayer, 4990 Upper Mountain Road, Lockport, asked where would the clay be going? why are the proposed ponds going to be so big? could there possibly be some contaminants from the junk yard located nearby, leaking into the ponds? where would the ponds be positioned on the properties?

Timothy Swift said the parents are good people and doesn't feel there would be anything done that would be detrimental to the property.

Public Hearing closed.

Concerns of board members:

Mr. Bechtel expressed concern about fencing the pond areas. When would they be starting the excavation and will there be a temporary fence?

Chairman said in the past have requested a temporary fence during construction of ponds.

Building Inspector said applicants are proposing a 3:1 slope, but during construction the slope is usually steeper and require a temporary fence around the ponds during construction or some type of security.

Chairman said we do have drawings with the application and told where the area is located.

Mr. Powley said the pond at the rear of the properties will be larger, approximately 320' in width by 1900' in length. The pond in the front will be approximately 320' in width by 1350' in length and will be 300' to 400' from the road. The ponds will be approximately 20 feet in depth with a 3:1 slope, walk-out ponds.

Chairman said they plan to remove the soil and it would be leaving the property and asked Mr. Powley where would the dirt be going?

Mr. Powley said they would be using an excavating machine with a pan and dump trucks. He said at this time they do not know where the dirt would be going. It depends on the type of clay from the pond area as to where it would go. He said they would like to see it used to help the environment. The clay soil will not remain on the property.

Mr. Robinson asked who owns the property on the east side and Mr. Powley said he does not know who the owner is.

Chairman asked if there is any particular reason for this particular size and Mr. Powley said none of the woods were located on the parcel he received from his parents. He said they are not going to farm the land or build houses on it. The soil is clay.

Mr. Powley said the trucks connected with the excavating would be using a driveway to Upper Mountain Road about 250 feet east of parents' property and approximately 200 feet west of other lot. The radio station is across the road from the proposed driveway.

Chairman asked about possible increase in mosquitoes and there was no answer to that question.

Mr. Powley said there could be a lot of mosquitoes from Bull Creek because the water in there moves slowly. He said he doesn't feel there would be any increase in mosquitoes.

Mr. Bechtel asked about the time table on this project?

Mr. Powley said he would have to talk to the people doing the excavating. He said he would have to pay for the Mining permit each year and it is very costly. He hopes to get the ponds dug in one year. Permit is a five-year permit from New York State. He said he has not paid for the permit yet.

Mrs. Kroening asked about owner of the two lots, are they co-owners?

It was said there are two separate lots, two separate owners. Kenneth and Karen own one and Daniel and Bethany own the second one.

Ordinance states ponds are to be no closer to a side lot line than 40 feet and applicants are requesting 20 feet from the east side lot line.

Building Inspector said they are applying for an Area Variance for twenty feet to get more fill out of the two parcels if they are joined.

Mr. Robinson said it is his understanding they will still have to pay taxes on the property.

Mr. Powley said the property was farmed last year and prior to 2009 the land was farmed, but nothing farmed behind Bull Creek Mrs. Schultz said it is farmable and was farmed to pay the taxes. Now, it is useless to farm the way it is. The parents subdivided the land to give to the children and wanted it to stay in the family.

Karen Powley said one of the brothers, James, has sold his parcel that was subdivided off of the farm.

Counsel asked if each of the siblings has an individual deed? He was under the impression that the parents, James and Marian, still had a retained life use.

Mrs. Schultz said it is too expensive to just pay the taxes with no revenue coming in.

The town did previously approve subdivision to James and Marian Powley for six (6) parcels. Residences could be built on this property.

Building Inspector said the pipe line crosses the property.

Karen Powley said the Powley property is lower than Bull Creek.

Mr. Bechtel said they would need to have a licensed surveyor to determine the slope. Contractor would have to have someone there to maintain the slope. This would require a Licensed Surveyor and applicants would be responsible for the cost of the surveyor.

Chairman said, as stated previously, the State of New York is very stringent on regulations for a Use Variance. There are much tougher requirements and applicants must furnish substantial information to support the requirements 1 through 4 on the application under "H".

As aforementioned, residences could be built on this property and farming operation has been conducted on the property. This is a self-created hardship.

Applicants stated the taxes are higher than they can afford to pay.

Counsel said he thinks the parents may still have life use of the property. He recommended the board recess and perhaps one of the applicants could get a copy of their deed tonight so the board could have the proper information this evening.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to table action on this application until we get further information on the issue of the deed. Unanimously approved, motion carried.

The board then proceeded to hold public hearing on application of :

(02-04-10) ROBERT and JENNIFER BUDDE, 5063 Saunders Settlement Road, Lockport 14094
Mr. and Mrs. Budde were present at this meeting and have submitted the following:

Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement and two copies of Survey map.

Mr. Budde said they would like to put a two-story addition on to the east side of their home, dimensions approximately 24' by 28'.

Public Hearing open: there were no concerns expressed by members of the public.
Public Hearing closed.

Building Inspector said addition would be to the east side of their home.

Board members had no concerns on this issue.

A motion was made by Mr. Smith and seconded by Mr. Robinson to declare **negative declaration under SEQR** on application of Mr. and Mrs. Budde. Unanimously approved, motion carried.

A motion was made by Mr. Robinson and seconded by Mrs. Kroening to **approve** application of Robert and Jennifer Budde for an Area Variance to construct an addition to their residence containing dimensions not larger than 24' by 28' approximately 27' from the road right-of-way. Unanimously approved, motion carried.

Renewal (tabled from beginning of meeting)

2004-02 (02-02-04) Omnipoint Communications, Inc.

There was no one present on behalf of the above.

A motion was made by Mr. Bechtel and seconded by Mr. Robinson to **table** action on renewal of Special Permit for Omnipoint Communications, Inc. for co-location of personal wireless telecommunication service facility equipment upon an existing telecommunications tower upon premises at 4621 Ridge Road, Lockport, for one (1) month and a second notice for renewal will be sent. Unanimously approved, motion carried.

REPORTS:

Chairman – Change April 26th meeting to April 19th: Planning Board meeting at 7:00 P.M. and Zoning Board meeting at 8:00 P.M.

Building Inspector – monthly report given out
working on cleaning up junk articles in the town

Attorney – nothing to report

Board members – nothing to report

Other Business – Theresa Kroening has agreed to serve as Vice Chairwoman for the year 2010.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to declare ZONING BOARD of APPEALS as LEAD AGENT IN REGARD TO SEQR for all SPECIAL PERMITS, VARIANCES, AND ANY OTHER MATTERS that should come before it in the year 2010, except for applications for which there is more than one permit granting authority. Unanimously approved, motion carried.

(10-28-09) Powley portion of meeting to request Use Variance for excavation and mining of two ponds on property east of 4950 Upper Mountain Road, resumed.

A copy of the deed to one of the applicants was provided to Counsel to review. He confirmed applicants' statement that there was no longer life use retained by parents and that applicants owned the property in question outright.

Bethany Powley Schultz then brought up a personal matter regarding her father, James Powley's health issue.

The Short Environmental Assessment Form was submitted with the application.

Counsel said an application for a project of this magnitude requires the Long form SEQR with DEC as Lead Agent.

Kenneth Powley said he was advised to go to the town first for their review and approval before proceeding with DEC.

Counsel recommended that the board make a negative declaration on the concept of the plan for the project. If the board decides not to deny Use Variance, Counsel recommended that the applicants proceed with Long form SEQR and work with DEC to fulfill SEQR requirements. It would then table further action and proceed with full environmental SEQR and then proceed accordingly on the application. If the board should deny the Use Variance, no further action would be required.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to declare **negative declaration under SEQR** on the concept of the application of Kenneth and Karen Powley and Daniel and Bethany Schultz to permit applicants to excavate and mine two ponds on properties on the south side of Upper Mountain Road. Unanimously approved, motion carried.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to **deny** application of Kenneth and Karen Powley and Daniel and Bethany Schultz for a Use Variance to permit applicants to excavate and mine two (2) ponds containing dimensions of eleven (11) acres and fourteen (14) acres respectively, upon premises due east of property commonly known as 4950 Upper Mountain Road located on the south side of said Upper Mountain Road between Junction Road and Comstock Road, and an Area Variance to construct both ponds 20 feet from the east side lot line of said premises. As not all board members voted aye, Secretary was requested to poll the board: Mr. Robinson "aye", Mrs. Kroening "nay", Mr. Reardon "aye", Mr. Smith "aye", Mr. Bechtel "aye"; application is **denied**.

Counsel said when there is denial, reasons must be given for same for the record.

A motion was then made by Mr. Robinson and seconded by Mr. Bechtel to amend the preceding motion to include the reasons for denial as follows: property could be used for residential purpose and also for farming operation and also there was not enough information submitted by applicants to substantiate their request. A second vote as follows: Mr. Robinson “aye” for denial, Mrs. Kroening “nay”, Mr. Reardon “aye”, Mr. Smith “aye”, Mr. Bechtel “aye”. Motion carried by a vote of 4 “ayes” and 1 “nay” for **denial**.

A motion was made by Mr. Robinson and seconded by Mr. Smith to adjourn at 9:15 P.M.

Respectfully submitted,

Marjorie E. Meahl, Rec. Secy.

Minutes approved: _____