

February 23, 2009

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 meeting.

Members present: John Reardon, Chairman
Norman Allen, Theresa Kroening, Donald Robinson, Peter Smith
Also present: Michael Bechtel, alternate
Robert Blackman, Councilman and liaison
Joseph Ohol, Councilman
Clifford Burch, Building Inspector
Donald Lane, Deputy Building Inspector
Gary Billingsley, Attorney

A motion was made by Mr. Robinson and seconded by Mrs. Kroening to approve minutes of meeting of January 26, 2009 as presented. Unanimously approved, motion carried.

TABLED RENEWALS:

- 1998-19 Crown Castle Atlantic LLC**
Special Permit for telecommunication **tower** and equipment shelter at 3023 Carney Drive on property of Pekin Fire Co., Upper Mountain Road. Renewal was due in December 2008.
Per Mr. Burch, renewal fee of \$500.00 has recently been received.
- 2002-16 (11-01-02) Crown Castle International** (formerly in the name of Verizon Wireless)
Special Permit for **co-location** of personal wireless telecommunication service facility equipment upon an existing telecommunication tower and accessory upon premises commonly known as 3023 Carney Drive, Pekin N.Y.
No communication or fee received as of this date. Renewal was due in Nov. 2008.

Counsel recommended tabling both Crown Castle Atlantic for the tower: and Crown Castle International for the co-location on tower for one (1) more month and hopefully action can be taken at the March meeting.

A motion was made by Mr. Smith and seconded by Mr. Robinson to **table** action on Special Permit of Crown Castle Atlantic for tower at 3023 Carney Drive, Pekin, for one (1) more month. Unanimously approved, motion carried.

A motion was made by Mr. Robinson and seconded by Mrs. Kroening to **table** action on Special Permit of Crown Castle International for co-location on tower at 3023 Carney Drive, Pekin, for one (1) more month. Unanimously approved, motion carried.

SPECIAL PERMIT REQUEST TABLED from January 2009

- 2009-01 (12-31-08) Gary Bell**, 4379 Plank Road, Lockport 14094
Public Hearing for personal dog kennel was held on January 26, 2009 to permit applicant to have

more than three (3) dogs on his premises. The board requested additional information from the applicant and action was tabled for one (1) month.

Mr. Bell, along with Jennifer Young, who said she lives in the same house as Mr. Bell, and neighbor, Peter Sidell, 4380 Plank Road, were present this evening.

Mr. Sidell was present at the January meeting and expressed opposition to the proposed kennel and reasons why he opposed this request and also had sent a letter to Mr. Burch dated February 16, 2009 with additional reasons for his opposition.

Mr. Bell submitted a copy of survey and said he is planning to erect an addition, 40 feet by 45 feet, to the back of existing frame garage.

A letter was received dated January 28, 2009 from Patricia E. Berntsen, read by the secretary, as follows “As the owner of 4399 Plank Road, Cambria I would like to say that having a kennel two doors from my property would not be a problem whatsoever. Since I rent this house, I also checked with my tenants, April and David Smith, and they are also in agreement that having a kennel two doors from the house would not be a problem.”

Chairman said we are not re-opening the public hearing.

Mr. Bell said the dotted line on the survey shows where the underground electric fence is located. All of his dogs (4) at present, are not allowed in the front yard of his home. He said someone in the vicinity of his home comes to his place around 2:00 P.M. every day when he is not there and takes them for a walk. Dogs are not left uncared for.

The addition he is proposing to existing garage will be wood frame construction with a chain link-fence inside.

Concerns of board members:

Mr. Allen asked applicant if he would consider putting anything else like another fence in case the electric fence failed?

Mr. Bell said on one side of his property there is a stockade fence. He said he doesn't plan to put up another fence. Dogs cannot dig under the electric fence.

Mrs. Kroening said she has gone by Mr. Bell's home once a week at different times since the January meeting and has not seen a dog in the front yard. She asked Mr. Bell about the ownership of these dogs and he replied they are his own personal dogs and will not be taking in others.

Counsel said no application has been received for a new building on this property. There would need to be a variance because of the size of proposed structure.

Building Inspector said he is aware of Mr. Bell's plans for the new structure and told applicant that the board acts on the variance, not the Building Inspector department.

On the application showed the acreage as 1.1 acres owned by Mr. Bell and per Mr. Sidell, in his letter, he had inquired with the assessor's office and Mr. Bell only has .86 acre.

Mr. Burch said the difference may be from where the measurement was taken, from the center of the road or property line.

Mr. Ohol said regarding noise, when Mrs. Kroening was there, didn't appear to be a problem on those days.

Building Inspector said if complaints are received, it is the duty of the Code Enforcement Officer to investigate the issue.

Chairman asked applicant about the sanitary issue regarding disposal of the waste?

Mr. Bell said his brother has 26 acres and takes the waste to his place and buries it. The brother lives in the Town of Wilson. He said he doesn't know how other people dispose of their animal waste.

Applicant said every dog has a collar and all four dogs are trained with the electric fence.

Chairman asked Mr. Bell if he has a business at his residence?

Mr. Bell said he does have business vehicles parked at his home but the business is at his brother's place.

Mrs. Kroening asked about the age of dogs as to when a license is required?

Building Inspector said when they reach the age of six (6) months.

Mr. Bell said the puppies would be sold before they are six (6) months of age.

Mr. Allen asked applicant when he plans to build the new building?

Mr. Bell said he plans to build the garage this Summer.

Mr. Allen asked Mr. Bell when he is not there and the dogs not in the building, would they be allowed to run loose?

Mr. Bell said the dogs are not allowed to run loose.

Mr. Bell said he has purchased the lot next door, to the south.

Mr. Burch suggested that Mr. Bell combine the two lots and then he will not need a variance for setback, only need variance for size of new building.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to **approve** request of Gary Bell, 4379 Plank Road, Lockport 14094, for a Special Permit for a private kennel to permit applicant to keep up to six (6) dogs upon said premises, with the following conditions as suggested by Counsel and agreed to by Mrs. Kroening and Mr. Robinson:

1. Personal dogs of applicant only.
2. Applicant to comply with existing ordinances and Local Laws including those regarding to:

- (a.) Outside storage
 - (b.) Disposal of animal waste
 - (c.) Dog ordinance regarding maintaining dogs on applicant's own property
 - (d.) Control of barking
3. Special Permit initially for a period of one (1) year pursuant to Special Permit ordinance.

As not all board members voted "aye", secretary was requested to poll the board.

Mr. Allen	-	"no"
Mrs. Kroening	-	"aye"
Mr. Reardon	-	"no"
Mr. Robinson	-	"aye"
Mr. Smith	-	"aye"

Three "aye" votes and two "no" votes, motion carried.

REPORTS:

Chairman said Theresa Kroening has agreed to serve as Vice Chairman for the year 2009. Thanked her for accepting this position.

A motion was made by Mr. Robinson and seconded by Mr. Smith 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 2009, except for applications for which there is more than one permit granting authority. Unanimously approved, motion carried.

Training meeting March 18th at Cornell Cooperative Extension 7:00 P.M. – 9:00 P.M.
Topic: "Purchase of Development Rights"

Attorney – Hopefully we can take care of both Special Permit renewals for: Crown Castle International – co-location and Crown Castle Atlantic – tower on property at 3023 Carney Drive

Monthly report and Annual report handed out

Letter from "The 2008 Niagara County Bicentennial Commission" of a celebratory concert featuring Philharmonic Orchestra on Tuesday, March 10, 2009 at Niagara County Community College

Concerns from December 22, 2008 meeting:

1. Patrick and Traci Garland, 4375 Lower Mountain Road, Lockport (formerly Burcyk property) Variance for housing livestock in existing barn and were to build a new barn within three years.
Mr. Ohol said applicant is exempt from construction of new barn.

Per Zoning Board minutes of May 22, 2006, Edwin Shoemaker, Attorney for the Town at that time, said he had researched the Town Zoning Ordinance and there is correspondence on file pertaining to the issue, relating to use of barn at 4375 Lower Mountain Road as follows:

Letter dated April 25, 2006 from Mr. Shoemaker to Clifford Burch, Building Inspector, pertaining to Area Variance which stated barn is permitted for animal husbandry under current Zoning regulations of the Town of Cambria based on his, (Mr. Shoemaker's) opinion, and listed seven reasons.

Letter dated May 17, 2006 to Wright H. Ellis, Supervisor, Re: Legal Interpretation of Town of Cambria Zoning Ordinance regarding property of Patrick Garland and his wife at 4375 Lower Mountain Road in which Mr. Shoemaker stated "That interpretation is the official position of the Town of Cambria", and

RESOLUTION, TOWN OF CAMBRIA ZONING BOARD OF APPEALS dated May 22, 2006

2. Neal Rouin, 3609 Saunders Settlement Road, Sanborn – Special Permit for in-law apartment – 2003. Letter dated January 10, 2006 from Neal and Karen Rouin requesting termination of permit as parents moved into their residence.
3. Jon and Tina Bruce, Macon, Georgia – subject property located in Escarpment District off of Cambria Road, 250 to 300 feet back – January 2006 – approved. Reported property has been sold.

Mr. Ohol said there should be a time limit once applicant has received approval for a Variance or Special Permit and nothing further done. He suggested one or two years and then Variance or Special Permit is terminated.

Per Zoning Ordinance, Page 101, ART. X11 SEC. 1203, No. 6. Provisions of appeal: "If the variance is granted or issuance of a permit is finally approved or other action by the appellant or applicant is authorized" etc. "Should the appellant or applicant fail to comply with these provisions within six (6) months, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn or abandoned his appeal or his application, and such permissions, variances and permits to him granted shall be deemed **automatically rescinded by the Board of Appeals**".

A motion was made by Mr. Smith and seconded by Mr. Robinson to adjourn at 8:46 P.M. Unanimously approved, motion carried.

Respectfully submitted,

Marjorie E. Meahl, Rec. Secy.

Minutes approved: _____