

October 22, 2007

The regular monthly meeting of the ZONING BOARD of APPEALS of the TOWN of CAMBRIA was called to order by Joseph Ohol, Chairman, at 8:00 P.M. He welcomed everyone to the meeting followed by the Pledge to the Flag.

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

Chairman announced the Agenda for this evening.

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

2007-12 (10-04-07) ROBERT MOORE and KRISTI MOORE, 7845 Indian Blanket Road, Beaumont, Texas 77713, prospective purchasers of premises commonly known as 3792 Ridge Road, for a Special Permit to permit applicants to construct a farm pond upon said premises pursuant to the Special Permit Ordinance of the Town of Cambria.

(10-04-07) ROBERT MOORE and KRISTI MOORE, 7845 Indian Blanket Road, Beaumont, Texas 77713, prospective purchasers of premises commonly known as 3792 Ridge Road, for an Area Variance to permit applicants to construct a .99 acre farm pond upon said premises, whereas the Zoning Ordinance does not permit construction of a farm pond exceeding one half an acre in size.

A motion was made by Mr. Robinson and seconded by Mrs. Kroening to approve minutes of meeting of September 24, 2007 as presented. Unanimously approved, motion carried.

TABLED SPECIAL PERMIT RENEWAL:

2003-11 (08-28-03B) Maria Rickard, 3134 Upper Mountain Road, Sanborn 14132
Special Permit to operate a heating and cooling business

As no one was present at this time on behalf of the aforementioned, a motion was made by Mr. Smith and seconded by Mr. Robinson to **table** action on renewal of Special Permit of Ms. Rickard until the end of the meeting and see if someone appears. Unanimously approved, motion carried.

CURRENT RENEWALS:

2001-15 (10-04-01) Crown Castle Int., 2000 Corporate Drive, Canonsburg, Pennsylvania 15317
Special Permit for co-location of personal wireless telecommunication service facility equipment upon an existing telecommunication tower, west of 4719 Lockport Road.

Mr. Burch said a representative of the firm called and said no one would be able to attend tonight's meeting and requested action be tabled for one month.

A motion was made by Mr. Robinson and seconded by Mrs. Kroening to **table** action on the Special Permit renewal of Crown Castle Int. for one month. Unanimously approved, motion carried.

2003-12 (09-04-03) Mr. and Mrs. Michael Maholsic, 4006 Beebe Road, Newfane, N.Y. 14108
Special Permit for a private dog kennel

Mr. and Mrs. Michael Maholsic were present at this meeting to renew Special Permit for the above.

Building Inspector said there have been no complaints on this Special Permit.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to **renew** Special Permit to Mr. and Mrs. Michael Maholsic for a period of three (3) years to have a private kennel on their premises. Unanimously approved, motion carried.

David Schendel, 4165 North Ridge Road, Lockport 14094
Special Permit for plumbing and heating business

A note was received from Mrs. Schendel stating that her husband, David, died last year and the business, Ridgeview Plumbing and Heating, has been dissolved as of last year.

A motion was made by Mr. Smith and seconded by Mr. Robinson that Special Permit of David Schendel expired on its own terms and per communication from Mrs. Schendel. Unanimously approved, motion carried.

1995-17 Robert J. Smith, 4455 Saunders Settlement Road, Lockport, N.Y. 14094
Special Permit to repair and sell firearms

Mr. Smith was present at this meeting to request renewal of Special Permit for the aforementioned.

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

A motion was made by Mr. Robinson and seconded by Mrs. Kroening to **renew** Special Permit to Robert J. Smith to repair and sell firearms for a period of three (3) years. Unanimously approved, motion carried.

PUBLIC HEARINGS:

2007-12 (10-04-07) ROBERT MOORE was present at this meeting along with Sean W. Hopkins, Esq. 5500 Main Street, Williamsville, N.Y. 14221, and Donald Swanson from Apex Consulting, 102 East Avenue, Lockport, N.Y. 14094.

The following have been submitted: Application for Area Variance and Special Permit,

Agricultural Data Statement, copy of portion of town map (2 pages), list of names and addresses of neighbors of the subject parcel at 3792 Ridge Road, as submitted by applicant, and copy of Site Master Plan as prepared by Apex Consulting.

Public Hearing open:

Mr. Hopkins referred to and quoted from Section 1100 USES PERMITTED AS SPECIAL EXCEPTIONS No. 1, IN AN AGRICULTURAL AND RESIDENCE DISTRICT , No. 20. “Farm Pond – not larger than one-half acre. The Zoning Board may grant such permit upon a finding of no environmental damage and a finding that the construction or alteration of said pond will not adversely affect drainage in the area. A satisfactory report from the Niagara County Soil and Water Conservation District shall also be submitted with an application for Special Permit for a pond hereunder.” Etc.

He then referred to letter dated March 29, 2007 from Victor F. DiGiacomo Jr., Niagara County Soil and Water Conservation District, which stated in part “this location should provide for a functional pond”.

Mr. Hopkins said Mr. Moore owns the property, approximately 94 acres, which he purchased about two years ago. He said the pond will be approximately eight (8) feet in depth and will contain approximately 2,044,620 gallons of water. Mr. Moore has been working with Apex Consulting Services and foresees no drainage or environmental problems with this proposed pond.

There were no comments from members of the public.
Public Hearing closed.

Chairman asked the board members if they had any questions on the application?

Mr. Hopkins said the second matter is to request an Area Variance because pond will exceed .5 acres in size, requesting .99 acres which is twice the size of what is permitted in the ordinance.

Mr. Hopkins said there are approximately eighteen (18) similar matters in the town which came before Mr. Moore’s request. There was one denial, Richard and Karen Yucos, who, he said, did not give the board the evidence.

Mr. Hopkins said Mr. Moore needs the pond to make sure he has a safe source of water in his control. Applicant feels .99 acre farm pond on 94 acres is not a detriment This has been a dry year and the pond would help out tremendously.

There are five considerations to be addressed by the applicant as stated on the application:

1. If Variance will cause a change in neighborhood --
Mr. Hopkins said this pond would not cause an undesirable change in the character of the neighborhood. In the Town of Cambria farm ponds are very common. There was no one present this evening to object to the pond.

2. If benefit sought can be achieved by other feasible means --
Apex Engineering Co. will make sure size of pond is suitable for the size of the farm.
Mr. Hopkins said Niagara County water is not feasible because the line is on the other side of the road and would have to cut through under the road and would not have control of that water.
3. If Variance is substantial –
Mr. Hopkins said this request is for .49 acre over what is permitted in zoning codes. Considering the size of the farm, 94 acres, that would be 1.1% of the total acreage.
4. If change will have adverse physical or environmental impact –
Per letter dated March 29, 2007 from Niagara County Soil and Water Conservation, there appears to be no physical or environmental impact, this area should provide a functional pond.
5. If existing condition is self-created –
Mr. Hopkins said he doesn't think the problem was self-created. There is a large number of acres and there will be more agriculture in the future. Need adequate water source, .99 acre pond is needed.

Mr. Hopkins said they are asking the board to declare negative declaration under SEQRA, Short Environmental Assessment Form was submitted, and asking the board to grant Special Use permit to permit applicants to construct a farm pond at 3792 Ridge Road, Lockport 14094?

(10-04-07) Robert and Kristi Moore are requesting Area Variance to construct a .99 acre farm pond upon said premises.

Mr. Hopkins said Mr. Moore had plans for a pond two years ago. His wife is from this area and they are planning to move to Cambria next year. They are planning to build a rather large home and will commit to the Town of Cambria and hope to be a valuable part of this community.

Counsel said Mr. Hopkins was addressing the issues that need to be addressed under "H" on the application. He said No. 5 condition "If existing condition is self-created", feels that is not a basis alone for denial. In a Use Variance, if alleged hardship is self-created, that is sufficient basis alone for denial.

Chairman thanked applicant and his attorney for understanding the board's decision for denial.

The definition of a farm in the Town of Cambria is any parcel of land containing at least five (5) acres which is used in the raising of crops, livestock and livestock products, etc.

Mr. Robinson asked applicant how he is going to irrigate the crops?

Mr. Moore said there are different ways of irrigating such as by cannon and tanks.

Mr. Moore said David Milleville, who rents property from him, needs water for his crops.

Mr. Moore said he plans to irrigate from tanks on vehicles for the trees and vegetables he is planning to raise.

Chairman asked Mr. Moore the following: “why would you be concerned about Dave Milleville irrigating his crops? Would you charge him for the irrigation? Is Mr. Milleville still going to rent the land from you? Do you plan to irrigate the entire property?”

Mr. Moore said he plans to irrigate for the betterment of the land.

Mr. Robinson said pond will be out of water in about two to three weeks. A lot of people he knows who irrigate, connect up to the County water. It is cheaper to use County water.

Chairman asked applicant “if in a drought situation like this year, would you get the water first or Mr. Milleville?”

Mr. Moore said he would stop Mr. Milleville from using the pond.

Mr. Allen said according to the ordinance, there is to be no importing or exporting of dirt from the property.

Applicant and his counsel said all of the dirt will stay on the land. Some of the fill from the pond will be used around the future home.

Mr. Robinson said there is to be no exporting or importing of dirt as a result of the excavation of the farm pond.

A motion was made by Mrs. Kroening and seconded by Mr. Allen to declare **negative declaration under SEQR** on application of Robert and Kristi Moore for Area Variance and Special Permit. Unanimously approved, motion carried.

A motion was made by Mrs. Kroening and seconded by Mr. Smith to **approve** request of Robert and Kristi Moore for a Special Permit to permit applicants to construct a farm pond upon premises at 3792 Ridge Road, Lockport, N.Y. 14094, upon a finding of no environmental damage and a finding that the construction or alteration of said pond will not adversely affect drainage in the area and construction of said pond will take place in accordance with letter dated March 29, 2007 from Niagara County Soil and Water Conservation District and all fill will remain on the property. As not all board members voted “aye”, secretary was requested to poll the board: Mr. Robinson “no”, Mrs. Kroening “aye”, Mr. Ohol “aye”, Mr. Smith “aye”, Mr. Allen “no”. Special Permit granted by vote of “3 “ayes, 2 “no’s”. Motion carried.

A motion was made by Mrs. Kroening and seconded by Mr. Smith to **approve** request for Area Variance to Robert and Kristi Moore to permit applicants to construct a .99 acre farm pond upon premises at 3792 Ridge Road, Lockport, N.Y. 14094, whereas the Zoning Ordinance does not permit construction of a farm pond exceeding one half (1/2) acre in size. As not all board members voted “aye”, secretary was requested to poll the board: Mr. Robinson “no”, Mrs. Kroening “aye”, Mr. Ohol, “aye”, Mr. Smith “aye”, Mr. Allen “no”. Area Variance is granted by a vote of 3 “ayes”, 2 “no’s”. Motion carried.

TABLED SPECIAL PERMIT RENEWAL:

2003-11 (8-28-03B) Maria Rickard
Special Permit to operate heating and cooling business

Ms. Rickard did not appear at this meeting for renewal of Special Permit.

Attorney was directed to write a letter to Maria Rickard stating this is the final notification on the renewal of Special Permit.

REPORTS:

Chairman – received communication from Niagara County Center for Economic Develop. dated October 5, 2007 Re: N.Y.S. Dept. of State Training at N.C.C.C.
Tues., Nov. 27, 2007

Attorney – nothing this evening

Building Inspector – there are two places where there are signs advertising a business and do not have special permits, one is commercial trucking and the other is house builder, repair and remodeling business.

Board members – nothing to report this evening

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

Respectfully submitted,

Marjorie E. Meahl, Rec. Secy.

Minutes approved: _____