

July 28, 2014

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

Members present: Michael Sieczkowski, Chairman  
Thomas Andrews, Craig Powley, Donald Robinson, Peter Smith  
Also present: Alan Johnson, alternate  
Randy Roberts, Councilman and liaison to the Town Board  
James McCann, Building Inspector  
Gary Billingsley, Attorney

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

**(05-14-14) NIKOLAY BLAYSHUK**, 3094 Lower Mountain Road, Sanborn, N.Y. 14132, for an Area Variance to permit applicant to construct a pole barn containing dimensions of 14 feet by 20 feet upon said premises within approximately 3 feet of the west side lot line and 10 feet of the south rear lot line, whereas the Zoning Ordinance does not permit construction of a pole barn closer to a side or rear lot line than 15 feet.

**(06-27-14) LAWRENCE RYNDAK**, owner of 4775 Carter Drive, Lockport, N.Y. 14094, and **MICHAEL SCHWEITZER**, applicant, of 1243 Majestic Woods Drive, Wilson, N.Y. 14172, for an Area Variance to permit applicant to construct a building to be used for agricultural purposes approximately 215 feet from the road right of-way containing dimensions of 60 feet by 50 feet upon premises located on the south side of Lower Mountain Road between 4766 Lower Mountain Road and 4788 Lower Mountain Road within approximately 30 feet of the east side lot line, whereas the Zoning Ordinance does not permit construction of such a structure closer to a side lot line than 100 feet.

A motion was made by Mr. Robinson and seconded by Mr. Smith to approve minutes of meeting of June 23, 2014 as presented. Unanimously approved, motion carried.

**SPECIAL PERMIT RENEWAL (current)**

**2001-08 (7-02-01) Mark Printup**, 3922 Upper Mountain Road, Sanborn, N.Y. 14132  
Special Permit for temporary residence for mother.

Mr. Printup said his mother has moved out of the apartment and he is now living in that apartment. It is a single-family residence. He said when the house was built, the septic system was for 4 bedrooms. The house is for sale as he and his wife have parted.

A motion was made by Mr. Robinson and seconded Mr. Smith that the Special Permit is expiring for a temporary residence for Mr. Printup's mother on its own terms. Unanimously approved, motion carried.

**OLD BUSINESS:**

**(05-21-13) Frank Dispenza, Sr.** 3130 Ridge Road, Ransomville, N.Y. 14131  
**Use Variance** to construct a twelve (12) acre farm pond on his property  
at 3130 Ridge Road, Ransomville  
Mr. Dispenza's Attorney, Charles W. Malcomb II, Hodgson Russ LLP  
Roger Mawhiney, Niagara Frontier Clay, Inc., trucker

Mr. Malcomb gave to board members copy of "Lexis Nexis" information on a court proceeding in Town of Rochester.

Mr. Malcomb said N.Y.S. Department of Environmental Conservation (D.E.C.), SEQR Lead Agency for this project, as stated in letter dated June 24, 2014, this project "will not have a significant effect on the environment" and "a Negative Declaration is on file". A Draft Permit is on file with tentative determination to issue a Mining Land Reclamation Permit for excavation of approximately twelve (12) acres of unconsolidated clay soil on Dispenza property. Ponds are allowed in agricultural areas.

Mr. Malcomb said this application for a Use Variance meets all of the criteria. A similar size pond was granted on neighboring property with the same criteria. He said Niagara County Soil and Water Conservation District had no problems with this proposed pond. Zoning Board may now act on the application for Use Variance.

Mr. Roger Mawhiney was asked if he had received the official Mining Permit and as of today, he said Mining Permit has not been issued. He was asked when he plans to start the excavation of the pond? He said it depends on when the permit is received. He said he has a lot of work to do now through this Fall.

Chairman asked Mr. Mawhiney how long do you think it will take to complete the excavation? Mr. Mawhiney said approximately three (3) to five (5) years from start to finish of the proposed pond.

Chairman went over the four issues in criteria on application:

1. No reasonable return can be realized from property as it is.  
Answer ó clay-type soil is not good for agriculture.

2. Hardship unique in the community?  
Answer ó Mr. Dispensa said soil was there.
3. Alter character of the neighborhood?  
Answer ó no
4. Is alleged hardship self-created?  
Answer ó Soil was there and cannot be used for agriculture, not self-created.

Chairman asked Building Inspector if he had any further concerns on this application for a Use Variance? Mr. McCann said no further concerns.

This pond will be used for recreation and for raising fish.

Mr. Powley asked why doesn't mining enter into this project?  
Excavation doesn't apply in this particular use.

Counsel asked how use will be considered? What is involved as far as raising fish in the pond?

Mr. Dispensa said he will be working with DEC and Buffalo Zoo, fish to feed the animals. Need large pond for raising fish for zoo.

Counsel said DEC has issued Negative Declaration and the Zoning Board is allowed to consider additional information and address issues that have been raised. The Board gave Mr. Malcomb an opportunity to provide some additional information tonight. Counsel said public hearing was concluded. May also give any other interested individuals time to speak tonight.

Mr. David Cloy said DEC has not made a complete decision and open for comments with DEC for 30 days after publication of notice.

Chairman feels we have sufficient documents on the subject and can act tonight on the decision.

Counsel said if board is inclined to grant a Use Variance, conditions can be placed on the issue.

Mr. Cloy said Mr. Mawhiney said he would not be starting until next year. Can board make a decision this evening without DEC's final decision?

Counsel said if there are no further concerns from the audience, question and answer period is now closed. Mr. Malcomb feels enough information has been submitted to the board.

When the Mining Permit comes in, it is to be given to the Building Inspector.

Regarding precedent, the board is to consider application of Frank Dispenza, Sr. as a Use Variance. This is consistent with a prior application of David Cloy for a pond on neighboring property.

A motion was made by Mr. Smith and seconded by Mr. Robinson to **approve** application of Frank Dispenza, Sr., 3130 Ridge Road, Ransomville, N.Y. 14131, for a **Use Variance** to permit applicant to construct a twelve (12) acre farm pond for aquaculture (fish farm) and to remove excavated material from said premises with condition that Final Mined Land Reclamation permit from DEC for the excavation of approximately twelve (12) acres of unconsolidated clay soil on the Dispenza property is received by the Building Inspector of the Town of Cambria. Time for removal of material is five (5) years. Applicant is to comply with D.E.C. on permit conditions. As not all board members voted óayeö, Secretary was requested to poll the board:

Mr. Robinson ó óayeö in favor of the Use Variance to Mr. Dispenza for a farm pond on his property;

Mr. Andrews - önayö opposed to the Use Variance to Mr. Dispenza

Mr. Powley - önayö opposed to the Use Variance to Mr. Dispenza

Mr. Smith - óayeö in favor of the Use Variance to Mr. Dispenza

Mr. Siczkowski - óayeö in favor of the Use Variance to Mr. Dispenza

There were 3 óayeö votes in favor and 2 önayö votes opposed. Approved.

#### **PUBLIC HEARINGS:**

**(05-14-14) NIKOLAY BLAYSHUK**, 3094 Lower Mountain Road, Sanborn, N.Y. 14132, was present at this meeting and has submitted the following:

Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement and sketch of proposed pole barn.

Applicant said he would like to construct a pole barn, dimensions 14 feet by 20 feet for storage of personal belongings approximately 3 feet from west lot line and 10 feet from south lot line. Building will be used for storage of lawnmower and yard tools.

Public Hearing open: there were no comments from members of the audience.

Public Hearing closed.

Mr. Blayshuk said there is a dilapidated shed there now and will take it down and replace with new building.

Chairman asked applicant how high this new building will be and applicant said it will be approximately 10 feet high. He then asked Mr. Blayshuk if he could place the building further in from the lot lines?

Applicant said there is an apple tree in the yard and also playground for the children is planned.

Mr. Robinson said 3 feet is too close to a lot line. Could it be moved over at least five feet?

Mr. Andrews asked Mr. Blayshuk how wide is your lot and applicant replied 101 feet in width. Could be moved at least 15 feet.

Applicant said that would be in the middle of the lot and near apple tree and playground. Applicant then agreed to place pole barn ten (10) feet from west property line and fifteen (15) feet from the south rear lot line.

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

A motion was made by Mr. Robinson and seconded by Mr. Powley to **approve** Area Variance as amended to permit applicant to construct a pole barn containing dimensions of 14 feet by 20 feet upon said premises within approximately ten (**10**) feet of the west side lot line and fifteen (**15**) feet of the south rear lot line. Unanimously approved, motion carried.

**(06-27-14) LAWRENCE J. RYNDAK**, 4775 Carter Dr., Lockport, N.Y. 14094, owner  
**MICHAEL SCHWEITZER**, 1243 Majestic Woods Drive, Wilson, N.Y.  
Agent (Applicant) were present at this meeting

The following have been submitted: Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement, Niagara County On-Line Mapping Application (2 pages)

Mr. Ryndak, owner of subject property, said Mr. Schweitzer would like to purchase the property from him and to construct a farm winery west of Eveningside, Inc., a farm winery. The property is located between 4766 and 4788 Lower Mountain Road. Building will be 60 feet wide by 50 feet long, property is 196.74 feet in width consisting of nine (9) acres.

Public Hearing open:

Randy Biehl, owner of Eveningside Winery, 4794 Lower Mountain Road, expressed opposition to the Variance to Mr. Schweitzer for a proposed building.

Mr. Schweitzer said the building will be 63 feet from Eveningside's production facility.

Gary Miles, 4766 Lower Mountain Road, west of property of Mr. Ryndak, is opposed to the request for an Area Variance because there will be increase in traffic, increase in noise, congestion, invasion of privacy, and vehicles turning around in his driveway and will only get worse. Should not be so close together.

No further comments  
Public Hearing closed.

Mr. Schweitzer said he has looked at other properties in the area. He wants to be a part of the existing Wine Trail. Mr. Ryndak said he owns nine acres and the width of the property is the concern. There are 202.78 feet in the back according to assessor's office.

Building Inspector has no concerns.

Chairman suggested tabling this application until next month and owner to get correct information, lot dimensions and L-shaped building distance from lot lines.

A motion was made by Mr. Robinson and seconded by Mr. Powley to table application of Lawrence Ryndak, owner, and Michael Schweitzer, applicant, for one month contingent upon receiving updated information ó lot dimensions and distance from lot lines to proposed building. Building Inspector requested distance from road to property line and parking lot dimensions. Unanimously approved, motion carried.

End of Public Hearings.

#### **OLD BUSINESS:**

**(03-27-14) Marc Varisco, 5851 Townline Road, Sanborn, N.Y. 14132**  
Subject property ó west of 3553 Lower Mountain Road, Sanborn  
to construct a barn 30 foot by 80 foot approximately 20 feet from west  
side lot line and 80 feet from east side lot line

At the June meeting application for an Area Variance for the barn was tabled until Town Engineer could look at the site, especially the elevation. There were two options: one was to build the building approximately 200 feet from Lower Mountain Road and the second option to build down in the field where land is flat and concern for drainage.

Ms. Parker from Wendel Engineers said Mr. Roeseler visited the site which is in an agriculture district. Near the road would support the building, would need fill at the back of the property for the building. One hundred feet front yard setback will comply with ordinance right-of way, side setbacks are the issue.

Mr. Powley feels down in the field would need a culvert in the ditch and add fill to support the building.

Property is 130 feet wide at the road and needs 150 feet in width for a house. There is 80 feet to lot line on the east.

Drainage could be affected down stream. Mr. Varisco said he would work with Town Highway Supervisor on the drainage. This building is for agriculture purposes, will not do any business from it, personal use only and there will be no animals on this property.

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

A motion was made by Mr. Robinson and seconded by Mr. Andrews to **deny** the Area Variance to permit applicant to construct a barn containing dimensions of 30 feet by 80 feet upon premises located west of 3553 Lower Mountain Road within approximately 20 feet of the west side lot line and 80 feet of the east side lot line.

Secretary was requested to poll the board:

Mr. Robinson - deny the Area Variance - need more setback on the sides  
(example - for snow to fall off of roof)

Mr. Andrews - deny drainage issue, need more discussion for setting of the poles

Mr. Smith - deny drainage issue

Mr. Powley - deny drainage issue

Mr. Sieczkowski - approve the Area Variance  
4 in favor of denial, 1 opposed to denial

New Business: none

REPORTS:

Chairman - Schooling - 4 hours - N.C.C.C. - Thursday, October 9, 2014  
begins at 5:00 P.M

Building Inspector - no report

Attorney - no report

Mr. Roberts - no report

Board members - no report

Next meeting August 25, 2014 at 8:00 P.M.

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

Respectfully submitted,

Marjorie E. Meahl, Rec. Secy.

Minutes approved: \_\_\_\_\_