

June 24, 2013

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: Michael Sieczkowski, alternate
Matthew Foe, Councilman
James McCann, 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:

(05-02-13) HAROLD BRYANT, 6314 Hoover Road, Sanborn, N.Y. 14132, for a Use Variance to permit applicant to construct a building with dimensions of 32 feet by 24 feet upon premises located on the north side of Lockport Road between Meahl Road and Diller Road that does not contain another principal building, whereas the Zoning Ordinance does not permit construction of such a structure when there is not a principal structure on said premises.

(05-21-13) FRANK DISPENZA, SR. 3130 Ridge Road, Ransomville, N.Y. 14131, for a Use Variance to permit applicant to construct a twelve acre farm pond for fish farming approximately 1800 feet from the road right-of-way and approximately 100 feet from the east and west side lot lines, and to remove excavated material from said premises, whereas the Zoning Ordinance does not permit construction of a farm pond exceeding one-half an acre, nor does it permit removal of excavated material from said premises.

(05-29-13) FLEVIE DANIELEWICZ, 5432 Baer Road, Sanborn, N.Y. 14132, for an Area Variance to permit applicant to construct a pole barn with dimensions of 30 feet by 40 feet approximately 20 feet from the north side lot line upon premises commonly known as 5935 Baer Road, which premises contain frontage on Lockport Road, whereas a setback of 100 feet from a side lot line for such a structure is required in the A-R District Ordinance of the Town of Cambria.

(05-31-13) DAVID WYLIER, 3072 Upper Mountain Road, Sanborn, N.Y. 14132, for an Area Variance to permit applicant to construct a garage with dimensions of 25 feet 1 inch by 40.8 feet upon said premises within approximately 86 feet of the road right-of-way and 12.5 feet of the west side lot line, whereas the Zoning Board had previously permitted construction of said garage by variance in a different location upon said premises, and the Zoning Ordinance does not permit construction of such a structure closer to a side lot line than 15 feet.

A motion was made by Mr. Smith and seconded by Mr. Robinson to approve minutes of meeting of May 20, 2013 as printed. Unanimously approved, motion carried. Secretary noted one spelling correction on Page 3, paragraph beginning with Mr. Fleckenstein, third line, the word feral should be öfurlö.

SPECIAL PERMIT (tabled from April and May 2013)

2012-05 (04-04-12A) Rob and Christine Winstel, 3537 Saunders Settlement Road, Sanborn N.Y. 14132 - Special Permit to operate automobile repair shop

Mr. and Mrs. Winstel have been notified three times regarding renewal of their Special Permit for the aforementioned business and there has been no response to the letters. There was no one present on their behalf at this time.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to table this issue until the end of this meeting. Unanimously approved, motion carried.

SPECIAL USE PERMIT (tabled from May 2013)

2013-03) (04-30-13) Gary and Judy Heppner, 5399 Cambria Road, Sanborn, N.Y. 14132, (not present at this meeting) to request a Special Use Permit to construct a 150 foot (actually 140 foot per application) Commercial wind energy system (windmill) with a height of 152 feet.

Mr. Thomas Fleckenstein, Niagara Wind and Solar, Inc., represented Mr. and Mrs. Heppner at tonight's meeting.

Mr. Fleckenstein said the Town Planning Board recommended approval of this request for a windmill on applicants' property at their meeting on June 17th and also recommended that the Zoning Board approve the application for same and then the applicants must return to the Planning Board for final Site Plan approval.

A **negative declaration under SEQR** was made by the Planning Board at their June 17th meeting. Zoning Board held the public hearing on May 20th.

Board members had no further concerns on this proposed construction of 140 feet Commercial wind energy system with a height of 152 feet at the tip. It appears this proposal will not interfere with land use in the Town of Cambria. Wind energy systems will not be detrimental to the town.

A motion was made by Mr. Robinson and seconded by Mr. Smith to **approve** request for Special Use Permit to Gary and Judy Heppner to permit applicants to construct a 140 foot Commercial Wind Energy System (windmill) with a height of 152 feet at the tip upon premises at 5399 Cambria Road, approximately 330 feet from the road right-of-way as permitted by Local Law No. 1 of the Year 2009 with the following findings as in the Local Law:

FINDINGS:

- (a) The proposed commercial wind energy system project is consistent with the Comprehensive Plan of the Town of Cambria.
- (b) The proposed commercial wind energy system will not unreasonably interfere with the orderly land use and development plans of the Town of Cambria.
- (c) That the benefits to the applicant and the public of the proposed commercial wind energy system project will exceed any burdens.
- (d) The proposed commercial wind energy system will not be detrimental to the public health, safety, or general welfare of the community.

The plan as submitted was approved by Wendel Engineers with additional information from Wendel per copy attached to these minutes. Unanimously approved, motion carried.

VARIANCE (tabled from May 2013)

(05-03-13) Jay and Glenn Wendt, 3030 Saunders Settlement Road, Sanborn, N.Y. 14132 for an Area Variance to construct an accessory building containing approximately 3,000 square feet on their premises. Public Hearing was held on May 20, 2013 and action was tabled for one month.

Jay and Glenn Wendt were present at tonight's meeting.

At the May meeting the Building Inspector was requested to look at Wendt's property.

Mr. McCann said he met with Jay Wendt and was told the building will be used for both personal and business purposes and feels that the proposed 3,000 square foot building is too large for this residential area. Mr. McCann feels the proposed 17 foot high building is not necessary for his use.

At the time of public hearing, Jay Wendt said it was for personal use, but actually, it will be for both personal and business use. Mr. Wendt said he has plans to construct an addition to the house at a future date.

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

A motion was made by Mr. Robinson and seconded by Mr. Smith to **deny** application of Jay and Glenn Wendt to permit applicants to construct an accessory building containing approximately 3,000 square feet upon premises whose principal dwelling contains approximately 1700 square feet. The board was unanimous to deny the application. Motion carried.

RENEWALS (current):

International Union of Operating Engineers, 3365 Ridge Road, Ransomville, N.Y.
14131 - Special Permit for training center

Mr. Paul McCollum was present on behalf of the Operating Engineers. He said there have been no changes in the operation

Building Inspector had no concerns on this operation.

A motion was made by Mr. Robinson and seconded by Mrs. Kroening to **renew** Special Permit of the International Union of Operating Engineers for a period of five (5) years. Unanimously approved, motion carried.

1992-07 Samuel Colosimo, 3588 Lower Mountain Road, Sanborn, N.Y. 14132
Special Permit for Rooming House

Mr. Colosimo was present at this meeting and said he requests no changes in the operation.

Board members and Building Inspector had no concerns on this Special Permit.

A motion was made by Mr. Smith and seconded by Mr. Bechtel to **renew** Special Permit to Mr. Colosimo to operate a rooming house at 3588 Lower Mountain Road for a period of five (5) years. Unanimously approved, motion carried.

2006-10 (06-01-06) James Henning, 2967 Lower Mountain Road, Sanborn, N.Y. 14132
Special Permit to operate a public stable at 2995 Lower Mountain Road

Mr. Henning was present at this meeting and said he would like to renew the Special Permit and requested no changes and wishes to continue.

Board members, Building Inspector and Attorney had no concerns on this business.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to **renew** Special Permit to James Henning to operate the public stable at 2995 Lower Mountain Road for a period of five (5) years. Unanimously approved, motion carried.

PUBLIC HEARINGS:

(05-02-13) Harold M. Bryant was present at this meeting and has submitted the following:
Application for Use Variance to permit applicant to construct a building with dimensions of 32 feet by 24 feet upon premises located on the north side of Lockport Road, between Meahl Road and Diller Road, that does not contain another principal building

This is Public Hearing No. 2 due to the fact the application was not received in time to get information to the Niagara County Planning Board for their meeting. The application was tabled at the May Zoning Board meeting. The second Public Hearing on this application for Use Variance was held this evening with the exact same information as in first application.

Mr. Bryant explained that the proposed building would be 32ø by 24ø approximately 150ø back from the lot lines centered on the property. In front of the location of the proposed building there are trees and building would be used for storage of his own personal things.

Public Hearing open; there were no comments from members of the public.
Public Hearing closed.

Concerns of board members:

Mr. Bechtel asked if there was a house on the property?
Mr. Bryant said there is no house on this property.

Mrs. Kroening asked applicant what he plans to store in the new building?
Mr. Bryant said he plans to store personal items and a lot of specialized scaffolds. He said he teaches at Job Corps. He has specialized things students don't see very often. He would like to keep the articles in this building.

Mr. Smith asked applicant if he plans to build a home on this lot?
Mr. Bryant said "no" he doesn't plan to build a house on this property, as it is not a good place to build a house. It would have to be something small.

Per information dated June 10, 2013 from Niagara County Planning Board, they recommended disapproval because the criteria for a Use Variance was not met and there was a concern about maintenance of an accessory structure without a primary residence on the property.

Building Inspector said on a request for a Use Variance, it is a challenge for people in New York State to meet criteria for Use Variance listed on the front page of application, "Hö under Use Variance No. 4 especially "If alleged hardship is self-created".

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

A motion was made by Mr. Bechtel and seconded by Mr. Smith to **deny** application of Harold M. Bryant to construct a pole barn with dimensions of 32ø by 24ø upon premises located

on the north side of Lockport Road between Meahl Road and Diller Road that does not contain another principal building and because criteria for a Use Variance was not met and there was concern about maintenance on accessory structure without a primary residence on the property and, No. 1 òIf reasonable return can be realized from property as isö namely, construction of a residence and No. 4 òhardship is self-createdö. Unanimously denied, motion carried.

(05-21-13) Frank Dispenza, Sr. and his wife were present at this meeting and have submitted the following: Application for Use Variance to dig a pond for fish farming on approximately twelve (12) acres, Short Environmental Assessment Form, Agricultural Data Statement, copy of letter from Niagara County Soil and Water Conservation District dated May 10, 2013 and copies of pictures of proposed pond area.

Mr. Dispenza said his business, formerly Cloyø meat market, has grown and would like some additional options like raising fish, all grown in the pond would be natural food source. There are Federal Wetlands on the property. One side would be a natural habitat and the other side grass and two weeping willows trees. He said he would need a permit from D.E.C. to allow the public to fish in the pond and would be under Special Permit and also would need a New York State license for people to fish in the pond.

Public Hearing open:

Wayne Giambrone, 4822 Upper Mountain Road, Lockport, N.Y. 14094, said fish pond and breeding would require design by an engineer.

Public Hearing closed.

Concerns of board members:

Mr. Bechtel said in the application mentioned composting of scraps from slaughterhouse business going into the pond. He said that puts nitrogen in the air. It was said fish do die from too much nitrogen.

Secretary read a letter dated June 24, 2013 from William Love, 3096 Ridge Road, Ransomville, N.Y. 14131, regarding the proposed pond of Mr. Dispenza, which stated in part that he is òopposed to the 12 acre pond but would go along with up to 3 acresö. He feels a òanother pond next to an existing pond with similar dimensions would be excessive for the areaö

Mr. Love asked applicant how many acres does he own and Mr. Dispenza said he owns 43 acres south to the grapes. The overflow from the pond goes into the creek

In the letter dated May 10th from Niagara County Soil and Water Conservation, stated
“Based upon the mapped soils at the property, the proposed pond site is located in an area that
should provide suitable conditions for a functional pond.”

Mr. Dispensa said he will need a Mining Permit from U.S. Army Corps of Engineers.

Applicant said Roger Mawhiney will take care of securing the permit as he knows what is
required legally and correctly to be done and said it will take approximately two months to
secure the permit.

The soil from the pond area will be taken off of the site. He said he could use the top soil
on his property. The land where proposed pond will be is clay type and does not produce good
grapes and other crops.

Building Inspector had no comments on this application.

Counsel recommended application of Mr. Dispensa be tabled until applicant is able to get
a Mining Permit if required. This board cannot make a decision tonight.

D.E.C. will be Lead Agent on Mr. Dispensa’s application for a pond.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to **table** application
of Mr. Dispensa for a Use Variance to construct a pond on his property until determination is
made if a Mining Permit is required . Unanimously approved, motion carried.

(05-29-13) Owner ó **Flevie Danielewicz**
Applicant ó **Renee’ Farrell** (daughter)
Louise Brachman (daughter) present at this meeting
Subject - Request to construct a pole barn 20’ from neighbor’s property

Mrs. Farrell and Mrs. Brachman were present this evening on behalf of their father, Mr.
Danielewicz.

The following have been submitted: Application for an Area Variance, Agricultural Data
Statement, Short Environmental Assessment Form, copy of portion of town map, survey of
vacant lot and copies of proposed barn (3 pages).

Mrs. Farrell said her home at 5935 Baer Road is in the front of subject property where
proposed barn is to be built, dimensions of proposed barn are 30 feet by 40 feet approximately 20
feet from the neighbor’s lot line. She said the land slopes and there is a water drainage problem.

In the future would like to put in a driveway to the proposed building. They do not want to place the building in the middle of the field which would interfere with the crops.

Public Hearing open:

Carl Kroening, 5921 Baer Road, Sanborn, N.Y. 14132, said this proposed building would be about 20 feet from his property line. He asked about the height of the building and size of the building and where would the entrance be? There are fruit trees next to the line and might interfere with them. Also, there is a drainage problem on that property. Building would be about 20 feet from his lot line. Mr. Danielewicz has a lot of land. What will this barn be used for? Where would the entrance be? Why can't he build it in the field?

Public Hearing closed.

Mrs. Farrell said this building will be used for storage, etc. There will be a driveway to the barn, no driveway at present.

Concerns of board members:

Mr. Reardon asked if they had a description of the proposed building?

Mrs. Farrell said the building will be 30 feet by 40 feet with an overhead door at each end with metal siding. She said it could be placed a little further away from the neighbor, suggested 30 feet further away and it would be 100 feet from her property line.

Mr. Bechtel said to applicant there is a drainage problem now and with the new building, wouldn't that cause more drainage problems?

Mrs. Kroening said they have fruit trees and a garden and they don't want a pond and have everything ruined by water drainage.

Building Inspector said the building will be about 40 feet from north property line going south toward Raymond Road.

Building Inspector said could put a limit on height of the barn and water would run off through gutters and down spout into the ground.

Counsel recommended the board members take a look at the site.

Mrs. Farrell said they would be agreeable to move the location of the barn further from Mr. Kroening's property.

Building Inspector suggested that the application be tabled for one month.

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

A motion was made by Mrs. Kroening and seconded by Mr. Bechtel to **table** application of Mr. Danielewicz for one month and the board could look at the site of the proposed building. Unanimously approved, motion carried.

Counsel said there is a discrepancy in the public hearing notice. There will be a new public hearing next month on the Flevie Danielewicz application with no additional charge to applicants.

(05-31-13) David Wylier was present at this meeting and has submitted the following:
Application for Area Variance, Short Environmental Assessment Form,
Agricultural Data Statement, letter dated May 30, 2013 from Wylier & Associates Re: Request for Variance ó modification to original variance granted ó 10ö Adjustment to North side of structure (front wall) and copy of resurvey.

Mr. Wylier said the Variance for garage is 10ö front setback difference from original Variance, width of building is 1ö over 25ø0ö width by 50ø0ö, 86 feet from road right-of-way.

Public Hearing: there were no concerns from members of the public.
Public Hearing closed.

Concerns of board members:

Chairman said to applicant, it appears you are making progress on your property now.
Mr. Wylier said he wants to get the barn finished first.
There were no further concerns of Board members, Building Inspector or Attorney.

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

A motion was made by Mr. Smith and seconded by Mr. Bechtel to **approve** application of Mr. Wylier for an Area Variance to permit applicant to construct a garage with dimensions of 25ø1ö by 50ø upon said premises within approximately 86ø of the road right-of-way and 12.5ø of the west side lot line. Unanimously approved, motion carried.

REPORTS:

Chairman ó no reports this evening.

Building Inspector ó no reports

Attorney ó The application of Craig and Tammy Campbell, 5783 Willow Creek Lane, Sanborn, 14132 to construct a 15ø by 15ø shed on their property was withdrawn by applicants. Application was tabled at the May 20, 2013 meeting.

Matthew Foe, Councilman, said a committee is working on updating the Comprehensive Plan for the town. Would like volunteers to work with the committee. Wendel Engineers is leading the meetings. Would like to complete this process before the first of the year, 2014. Working on definitions, setback for building on a lot, how far from lot line?

Tabled issue from beginning of meeting:

Rob and Christine Winstel for renewal of Special Permit for automobile repair shop. No one appeared on their behalf.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to allow Special Permit to expire on its own terms. Unanimously approved, motion carried.

New Business ó none

Complaint ó Mr. Robert Keller, 3694 Lower Mountain Road, Sanborn, N.Y. 14132, lives opposite Richard Hahn's business, wanted to know why a third building was allowed to be built on the Hahn property? Mr. Hahn is sandblasting at 6:00 A.M. He has five buildings on the property now and putting up another structure. He said he was not notified of this additional building.

Counsel informed Mr. Keller that additional building for storage was permitted by amendment to existing Site Plan, and that a public hearing is not required for Site Plan Review. If there is a public hearing scheduled, neighbors are notified.

Next regular meeting will be July 22nd.

A motion was made by Mr. Bechtel and seconded by Mr. Robinson to adjourn at 9:30 P.M.

Respectfully submitted,

Marjorie E. Meahl, Rec. Sec.

Minutes approved _____