

ZONING BOARD OF APPEALS  
TOWN OF CANAAN  
COLUMBIA COUNTY, NEW YORK  
March 30, 2017

Present: David Cooper, Bill Wallace, Christy Ransford, Jack Steffek  
Absent: Sandy Haakonsen, Pat Liddle

Chairman Cooper opened the meeting at 7:02 p.m. with 17 people in the audience.

There are 4 items on the agenda; Two files to consider and two Public Hearings

David asked if there were any changes needed to minutes from the 3/2/17 meeting, and the answer was no across the board. Motion made by Bill Wallace to accept the minutes as submitted with a 2<sup>nd</sup> from David. All in favor. Minutes stand carried.

David then began by informing the audience that the Canaan Planning Board has been trying to clarify an issue that needs correcting and after review the Town of Canaan attorney agreed. The issue has to do with Site plan reviews on residential properties. Until recently any reviews on residential properties was conducted by the Zoning Board of Appeals. There is wording in the law that actually reads that any Special Permit application that requires Site Plan Review needs to also go to the Town of Canaan Planning Board. The Zoning Board will give a full copy of files to the Planning Board for their reviews. This will impact the file of **David Gliner #2017-3**. Chairman Cooper suggested they get in touch with the planning board soon, so they can get on the agenda for the next meeting. The ZBA will not be able to reach a decision until the Gliners have gone in front of the Planning Board.

**7:05:** Chairman Cooper decided to start with consideration of file **#2017-4** for **Mark Meppen**, 13190 State Route 22, Canaan, NY 12029, **Tax Map ID #60.-1-35**. Mr. Meppen is applying for a special permit because the property is located in a C2 district. He is looking to move his Plumbing and Heating business to this location. Mark stated that it will be more or less a Warehouse, meaning he will go there for a half hour in the morning and a half hour at night to pick up his van. He will load/unload his vehicle there.

David looked at the survey map showing where the existing building is located. David asked if there was a well and Mr. Meppen stated that there was in fact dug well, but as of now there would be no septic or plumbing to the building, but for future the Planning Board is asking that Mark add them to his plans. Mark wasn't sure whether he was in front of the Board for a Variance or a Special Permit. David told him he was applying for a Special Permit. What is needed to Make the file whole is denial by Zoning Enforcement Officer Lee Heim, and also, he needs to use section B of the Special permit to make a business plan and narrative. Mark said he had given a narrative to the Planning Board, and the ZBA Clerk stated she had received it and would pass it on to the Board. David asked if Mark was following through with Site Plan review and Mark said he had met with them once, but before going to the County he needed to see the ZBA again. David said once the Board has a full file it will be forwarded to the Columbia County Planning Board.

Bill Wallace asked if there would be a sign and Mark said there would be. He said that it was not on the map yet as he still needs to get lighting and topography added. He wasn't able to complete that just yet, as the meetings have been so close together. Mark said the sign is approximate right now because if he calls 811 and there is a cable underground where he wants to place it then it will need to be moved. Bill asked for dimensions to be added.

Chairman Cooper stated that he wants the file complete by next Thursday April, 6. Mr. Meppen will get his information in. David also wondered if the septic was mentioned in the SEQR. Mark said he had been speaking to the building Inspector about that, and it is a dug well. The building Inspector has been in touch with the Department of State and Mark may apply for a variance for the original building. The code says that no matter what you build new, you have to have water in the bathroom. Right now, Mr. Meppen just wants to get to a point where he can use the building.

David made a motion to accept the file on condition that Mark has his paperwork in to the Board next Thursday. Bill Wallace with 2<sup>nd</sup>. All in favor.

**7:15:** David read the next File for consideration which is **#2017-5 for the East Chatham Food Company, 1267 Rte. 295 East Chatham, Tax Map ID#37.-1-71. The representative is Rick Newton,** and the business is trying to add a freestanding outside deck. Part of the deck will have a roof that is attached to the existing building, along with a handicap exit ramp. The property is zoned RAll and the paragraph of the Zoning Ordinance that is being appealed is Article IV, Subsection A, for a Use variance.

David asked if Mr. Newton knew why he needed the Use Variance. Mr. Newton stated that he did. David explained that the appellant had a good case for a Use Variance as they were an ongoing operation. He will need a narrative. Mr. Newton said he would write one, and went on to explain that the Variance seemed to have some grey areas. He stated that the Planning Board originally okayed the project but Pierre Gontier then spoke to the Town Attorney who said absolutely not.

David asked where the setback issues were now in conjunction with this project. Rick had originally proposed that the deck would not go any further than the edge of the building that now contains a one bedroom apartment. The Planning Board originally said that he would not be increasing the nonconformity because the deck would not be going outside of a squared, up envelope. Rick said that was fine with him, but then got a call back from Pierre stating this was not going to be possible. That is when it turned into a Use variance. David said that setback issues are easier to deal with than the Use Variance.

David wants the file to be completed by next Thursday so that the Board can get Rick scheduled for a hearing and also get the file sent to the County. Furthermore, the Board will get all the new information to the Canaan Planning Board. David told Rick that he had standing with the Board. He asked for a Narrative and answers to the four Proofs.

David asked if the proposed deck was 60' feet from the rear lot and the answer was yes. Rick stated it was an RAll zone, but only contained 1 acre instead of 2. He said the sides and rear are fine but not the front. David said typically there are provisions for a historical place that can't meet Front Yard Setbacks.

David stated that research may be involved to see if the original ordinance back in the 60's would have included this business. Rick then stated that he just wanted to inform the Zoning Board of some of the issues the Planning Board had. They include not enough parking, septic and lighting issues.

Bill asked that they throw in the Front and Side Yard Setbacks as part of the application. Rick will submit documents by next Thursday.

David made a motion to accept the file with a 2<sup>nd</sup> by Christy. All in favor.

**7:32:** David read the Public Notice for **File #2017-2 for TJB Land Corp. 35 Flints Crossing Road, Canaan, NY 12029 Tax Map ID#70.-4.100.** The representative is Andrew Petersen from Monolith Solar. Mr. Petersen turned in his receipts from notifying abutters and had already paid his \$25.00 Special permit fee. The file is for a PV Solar Roof Mounted project.

David asked if they were able to comply with the 110% usage and Andrew gave the board a copy of an electric bill showing an annual usage of 32,000kw with a 34,200kw system, which is within the 110% range. This was for a small nonresidential system. Bill asked that Andrew get a full year, worth of data so they can get a good sense of the average. Next month Andrew is hoping to have a new file for the Board that will be for a bigger system on a different parcel of TJB Land Corp.

Chairman Cooper asked if Andrew had been back in front of the Planning Board, and Andrew said they hadn't been notified to do so. He stated that they had gone in front of the Columbia County Planning Board. David pointed out that the Zoning Board can't deliberate until they go in front of the Planning Board. David pointed out that the Planning Board had a whole list of things that they needed. Andrew will get in touch with Tammy Flaherty.

David said we could close the hearing, but need to deliberate within 60 days or we will have to agree to an extension. David asked if all the roof issues had been resolved, and Andrew said they had gotten an engineer out there and everything was fine.

Bill asked if they were selling electricity, and the answer was not for this project, but probably for the next one.

David entertained a motion to close the hearing for file #2017-2 with a 2<sup>nd</sup> from Bill Wallace. All in favor. Hearing closed at **7:43.**

David recused himself at this time and Bill Wallace acted as Chairman.

**7:45:** Bill read the Public Notice for **File #2017-3** for an Earth and Berm pond for David Gliner, **530 Route 24, Tax Map ID#68.-1-16.**

Bill stated that the board had received a revised Site Plan which showed the pond to be 40' rather than 30' from Indian Creek. David Gliner said the pond had always been that far away, but the engineer had written it wrong.

Bill looked at the engineer signed drawings that Mr. Gliner had submitted at the request of the Board. The pond is 242' long, 38' wide on one end and 90' on the other. Earth and Berm on the Northern side, with the Berm being 15' feet wide at the top and quite bit wider at the bottom. At the widest point, it is 18' and the base is 42'. The pond is drawn as 20' deep and is about 9' or 10' higher than the creek. The fill is from 5' to 12', with the spillway to the East and the overflow and spillway to the West. Bill mentioned that there were notes stating the engineer would inspect, and that was good because otherwise he would have recommended inspections. There are also calculations on the pressure that

the designed dam can hold. Bill stated that anyone can go look at the documents as they will be on file at the Town Hall.

Bill, Jack, and Christy took turns reading aloud 8 letters that were submitted to the Board with many concerns for the pond project. The letters were all from abutters, and included **Virginia Nightingale, Diane Bliss, Janet & Hiroshi Kazo, Martha Parrish, Ryan Conway, David Cudaback, Suzanne Michael** and **Marilyn Webb**. All of these letters are on permanent file at the Canaan Town Hall in the ZBA file **#2017-3**.

Bill then stated that he had a letter from the Army Corp. of Engineers who said that this project is not in their jurisdiction. He had also spoken to Trish Gabriel at DEC, and she stated that the DEC does not require permits, nor do they have any issues or concerns that there would be catastrophic failure. She was glad that there was an Engineer involved and that there were safety factors built in. The Spillway will not need to be excavated, as there will be stones placed on the existing grades.

Audience member Diane Bliss asked what qualifications Trish Gabriel had. Bill informed her that she is an Environmental Analyst. Diane had a problem with her Flat Bottom Pond near the wetlands. DEC asked if she had dug the pond and she told him it had been there for over 50 years. She was told in this day and age she wouldn't be able to build a pond so near the wetlands, so she doesn't understand how Mr. Gliner can build. Mr. Gliner stated that his pond was not on wetlands.

Bill went through Part 2 of the SEQR and all answers were no. Bill asked David Gliner if he had anything to add to the application? He reiterated from the last meeting that this project has always been out in the open and that the building inspector had come to the property and okayed the project even after it was started. He is also sorry the neighbors feel uncomfortable but feel they have a right to build the pond. They have paid professionals and most certainly don't want to hurt anyone. He doesn't want any issues, he just wants to live in peace. Mrs. Gliner then added that they have been living there for 20 years and love the town. They come every week, because Red Rock calls to them. She said they sent out 16 letters to abutters but got only 8 letters in response. Not all the neighbors are against the pond. The Hogan's didn't have any problems with the project even though they are directly downstream from the proposed pond. She has no problem with it because she knows we are doing everything right and following the letter of the law. Mrs. Gliner stated that they have also seen the results of flooding from Indian Creek. The last thing in the world they want is for anyone to incur any inconvenience from this project.

Mr. Gliner then stated that he had measured the distance to the closest neighbor, and it was 700' from the pond to their property. He feels that even if the dam were to start slowly leaking, most of the water would be absorbed before it reached the Hogan property.

Bill announced that it was a public hearing, so anyone could make comments. Audience member **Chad Williams** asked to speak. He said there is a process that exists for this sort of project, and it is a Hazard Analysis and is a very common practice. David should have his engineer commit to doing one and then it should be cross referenced by a Town Engineer. This would be a simple request for the town to make. Chad believes the calculations that are being shown are too simple, and don't take into account things like pressure from ice buildup and silt loads coming down. There are more parameters than are being represented. Bill asked if Chad happened to be an engineer and he is not. Chad stated he just wants to

make sure the pond is built properly. Chad said there is an outfall of silt because of the digging that has already been done. Chad again stated that there is a myriad of tests that can and should be done.

Mrs. Gliner mentioned that others have built ponds etc. and she has never received a notice to abutters letter. She feels they are being singled out. Bill stated that if there were Special Permits needed for the work they would get a notice. She said the people never filed at all with the inspector. Bill said that Mrs. Gliner had mentioned this at the last meeting and she should bring it up to the building inspector, but it has nothing to do with this matter.

Audience member **John Sheedy** Spoke next. He stated that when he looks up and sees this huge pond that someone told him will hold a million gallons of water, he worries that if there is a breach it will go right into his house. He and his wife Marilyn have experienced this before with the water from Schoolhouse Road coming down. After the water came in before, he was denied any money from both the insurance company and the Town because it was an act of God. The basement ended up getting mold, and whether related or not, his wife ended up with lung cancer. This pond is not an act of God, so who is liable? A lot of us face the possibility of being flooded and who will protect us? We want the Town to protect us.

**Suzanne Michael** spoke next. She asked why there are so many inconsistencies with the paperwork over time. She questioned why the DEC asked for Mr. Gliner to do the measurements himself. If the DEC is not doing due diligence then I think it is for the Town to do so. To follow up on what Mr. Sheedy said, who is going to be liable? In all the documents Suzanne has looked at there are different numbers. Mr. Gliner stated that corrections were made. If everything clears out and there is a hazard survey okay. If something happens to the very steep slope and it washes away, it will undermine all the work that Bernie Meyer and his crew have been doing on the bridges and roads. If engineers come out and say all is well it would be ok. There are too many inconsistencies in the whole file. If the puzzle ultimately comes together then it will be different. In the meantime, she suggests that the file stays open and there is a continuance. She believes there are wetlands involved and that the Army Corp. of Engineers need to be involved as well.

David Gliner said it is not wetlands, and that the creek bed goes up and then goes flat and then it is not even a creek bank any longer. This can be looked up online. Because there are no wetlands, the distance only needs to be 30' from the creek. In The case of Diane Bliss, there are wetlands, but not here.

**Martha Parrish** said she has wetlands. She wondered if the top of the pond would be within the 100' distance that is the required distance it needs to be from a wetland. She also wants to know if the Board can get an engineer. Bill is not sure if the Zoning Board can, but is pretty sure that the Planning Board can, and he will look into that. Martha asked if the next step is for the Gliners to go to the Planning Board, to which Bill said yes. He said that the Zoning Board can only close the hearing, but cannot deliberate until after the planning Board sends it back. Mrs. Parrish asked that if the Planning Board denies this, will it not come back? Bill will check on that, but doesn't believe it would because it was disapproved from the Planning Board.

**Ginny Nightingale** was next to speak. She is glad this is going to the Planning Board, and also that an independent engineer may be hired because we really don't know the engineer who did the drawing, or if he even came out to the property. It is important that someone who represents the town comes and looks. Ginny stated that in the 38 years that she has lived in red Rock she has seen floods that people

just can't believe. The water comes down off of all the surrounding mountains and it is like being at the bottom of a funnel. Ginny noted that there is a Special Permit process and it needs to be done correctly to protect those that are downstream. She believes this is the only Berm Pond around. The other pond that was mentioned empties into a very, very large field. This pond would empty directly into the creek which goes downhill. You would think one would be very careful how the dam is constructed and she believes that this dam is being constructed by the land owner. She doesn't think the landowner may necessarily know what they are doing as far as keeping with the plans the engineer has drawn up. She also wanted to point out that the Gliner home is upstream from the pond, and most of the other audience members are downstream. According to the website, Indian creek is a class "C" stream and is a trout spawning stream. Anything that washes out of the pond will have an effect on the trout spawning. As a class C stream, "a bank will not be considered to extend more than 50' horizontally from the mean high water line." Why Indian Creek is only 30' I don't know. Another neighbor had her property logged and the logger refused to go any closer than 50' away from Indian creek. Indian Creek is a protected, valuable resource for the town. Acts of God happen, but to build something that will threaten it, is another story. The Zoning Boards task is to make sure the engineered plans are accurate and that the building is according to the plan. Ginny said she wasn't sure, but she didn't remember seeing the berms until very recently. A lot of the excavation and walls of dirt are what got us going. There was a hole, but I don't think the berms were there.

**Marilyn Webb** said that for some reason Red Rock seems to some kind of microclimate that ends up having huge downpours. Apparently, a while ago there was a pond with a berm that was so destroyed that the DEC would not allow it to be rebuilt. I hear stories of things that happened before my time like the stream looked like it had white caps coming toward my house or the rocks and logs were coming down the creek. These are life threatening events. We have a responsibility to protect all of us and the County Highway Department has just done a whole project to rebuild the bridge by Ginny's house and now they are working on a different bridge. We need to protect all of the infrastructure. We wouldn't want another flood that would contribute to the microclimate being more than just a natural event. The Creek goes through Austerlitz and Chatham as well. We have responsibilities to the other towns as well. Marilyn said she agreed with Ginny, and the Board needs to get an independent engineer for the whole environmental impact. This would make us all feel better.

David Gliner stated that the pond would have an 18" water outlet like a pool skimmer, so no fish can go out and it has an 8'ft overflow so the pressure is the same all of the time. When asked where the water would come from to fill the pond, David responded that the DEC said he could use a pump from Indian creek to fill it. Chairman Wallace said he wasn't aware of that. Ron Davis Jr. said that they didn't need to use Indian Creek because there were natural springs all throughout the pond.

**Diane Bliss** said she had a pond around that size and when hurricane Sandy came through, the culvert that bisects her property collapsed and the water came down from County 5 and filled my pond and back yard. I also have an outflow pipe that is 18" and it took my yard days to drain the water into the wetlands and my land alongside my pond was wet for two years. When you walked on the land it sounded like a sponge.

**Suzanne Michael** said that the cake is built with the ingredients, so if we know all the sources they need to be part of the hazard analysis. We need to know whether the water will come from the creek, and what kind of impact that would have, or if it will fill naturally from the springs. If in fact ¾ of an acre is

filled with water and there is a steep hill behind it the rainwater that comes down that hill is not going to be absorbed. Need more details.

**Damaris Broderick** has had her home for 35 years and loves her community. She has lived through some of the floods and has had water 2 inches below her furnace. She said that the original Permit was for a Flatland pond that was okayed. Why was it changed to this deep pond? Bill Wallace said he had the same question. David Gliner said that it was 9' out of elevation. Mrs Gliner explained that the building inspector had come out and David had his laser out and they saw it was 9' in elevation and still told us to fill out the permit for a Flat Bottom Pond. We are building the same exact pond that we discussed with him. It has never changed except it got a bit smaller because of some boulders. Bill asked if they could just have a flat bottom pond and David said no because of the 9' of elevation on one side, the water would just pour out the other side. That is why there is a berm to level it out. Even if it is a 30' deep pond only 8' of it is above grade. Bill said that it only shows 8' of fill but it will be 20' deep and it doesn't make sense. David said they were not sure how deep it would go. He was just trying to say what it might be. We may only get to dig 3 feet before we hit boulders.

Damaris Broderick then asked who is building the pond? Bill said that would show on the permit. He said there is an engineered plan. He would expect that no matter who builds it that the engineer would come and inspect and make sure it was built accordingly and in compliance. What happens with the Site Plan review? Bill explained that the board would close the meeting and that all of the files would be sent over to the Planning Board. They will do a complete review and may have a Public Hearing, or they may not. If there is another Public Hearing they will be notified.

What then is the domain of the Planning Board vs. the ZBA Domain. Bill said the Planning Board will get all the information, including the letters and they will review their concerns which may be totally different than the ones brought up tonight. The Planning Board has their own requirements that they may have the applicants do. Ginny said the Planning Board will look at the Zoning Laws as a whole, but they don't grant Special Permits.

Mr. Sheedy said that he wanted to know who was liable? Bill can't really answer because he is not a lawyer, but he would suspect that if the engineer is licensed in NY State and designed and inspected it, then he probably would be one of the responsible parties. That is one of the reasons professionals get stamps.

Ginny asked if it was the engineer who drew up the plans that would do inspections and bill said yes. She then wanted to know how the Board would know if they were done. Bill said that the engineer would put it in writing and if he were lying he would be putting his license at risk. If it were requested by us then the Building Inspector would be looking for the information.

David Cudabeck asked if the Board would deliberate between now and the Planning Board and Bill said no. The Board will close the hearing and deliberate after the Planning Board has approved the Site plan. Mr. Cudabeck wants to know what happens to all their concerns that were brought up at this meeting and Bill told him that they would all be sent to the planning Board, including the minutes and the letters.

Some of the audience was concerned that the pond was partially dug and that when the thaw came it would cause damage. Bill stated that the board will go to the property and take a look. Mrs. Gliner said

nothing has been dug. Mrs. Gliner said they were welcome to come but she would like to be present. Mr. Gliner said that only the Board could just come and look.

Mrs. Gliner wanted to know who is responsible for the payment of a Special engineer. Bill said if the Planning board was going to require it that they have a right to ask for a retainer to get an engineer. The Site Plan Review is separate.

It was asked when the project would go to the Planning Board and Bill said he thought it would be the next meeting as long as the Gliners applied. Bill will make sure to get them the information. The next meeting schedule will be on the Town Website.

Bill made a motion to close the Public Hearing with a 2<sup>nd</sup> from Christy. All in favor. **Public Hearing closed at 9:34.**

Bill Made a motion to close the meeting at **9:34** with a 2<sup>nd</sup> from Jack Steffek. All in favor.

For the Board,

Heather O'Grady,  
Clerk