

ZONING BOARD OF APPEALS
TOWN OF CANAAN
COLUMBIA COUNTY, NEW YORK
July 25, 2017

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

Chairman Cooper opened the meeting at 7:00 p.m. with eleven people in the audience.

There is one Deliberation and one Public Hearing that will reconvene, on the agenda.

David explained to the audience that he would recuse himself from the deliberation of the first file for David Gliner, and that Bill Wallace would Chair. After that there would be a 5, minute recess and then Bill Wallace would recuse himself while David again took over as chairman for the Public Hearing for Mark Meppen.

Deliberation of file #2017-3 for Special Permit for an Earth and Berm Pond for David Gliner began at 7:02

Bill asked for the approved Site Plan from the Planning Board, and then shared them with the rest of the Board who had not yet seen them. Bill told the audience that we had the approved Site Plans and added that the Planning Board had added two stipulations which were that if any trees were to be cut they would need to meet DEC guidelines, and the second was that if the plans were to change more than 10% from the proposed plans then they would need to submit new plans.

Bill stated that the Board had formally gone over the Short Environmental Form and had said that the project would have a small impact. He mentioned that the Planning Board had gotten a letter from the DEC that this project didn't fall under its jurisdiction and that they had no issues with it. He went on to say that in reviewing the General Standards for Special Permits from our zoning laws he didn't see any issues with A-I which are the ones the Board looks at.

Sandy Haakonsen asked if we knew where the water will be coming from to fill the pond. Bill said his assumption was that it would be runoff. He stated it couldn't be from the creek unless it was pumped, and if that were the case DEC would need to approve that. Christy asked if that was noted and Bill said it could be made a condition. David Gliner said that the water is already flowing and that there is a 10" outlet and it will fill itself up in probably two months. If they need to pump water they have already spoken to the DEC and they will get a permit for it.

Bill asked the Board if there was anything they wanted to add or any concerns. He asked David Gliner if he planned on planting anything because it would affect the structural integrity of the dam, but the answer was that it was mostly clay and nothing would be planted. Bill said he would make it a condition that nothing could be planted. Bill stated that all DEC regulations were being met and that the Planning Board made sure of that as well. Mr. Gliner said that he had three DEC people at his house and that they had walked the whole property including a walkthrough of the pond and they were happy.

Bill said he had nothing else to add and Christy Ransford said we had covered all concerns at previous meetings and Mr. Gliner has followed to the letter what was asked so she had no questions. Bill made a motion to close the deliberation and accept the file as submitted with three conditions. The conditions being no planting on the berm, follow all DEC regulations and the water source needs to be from runoff unless they get a permit from the DEC. Second by Christy.

The clerk polled the board

Bill: Aye

Christy: Aye

Jack: Aye

Sandy: Aye

All in favor. 7:11

Mr. Gliner asked when he could begin construction, and was told as soon as he received the final approval letter. He is hoping to begin by Friday and Bill said he would do his best.

7:16 David returned and asked the board if there were any changes to the June meeting minutes other than a small amendment asked for electronically. The sentence to be amended is: Bill said he looked at the panels and that it meets code. This now reads: **Bill said he looked at the panels and it all meets code requirements for fire fighters access to the roof.

There were no other changes and David made a motion to accept the minutes as amended. Sandy so moved and Christy with a 2nd. All in favor.

Chairman Cooper said we would resume the Public Hearing for Mark Meppen for a Special Permit in a C2 zone. He said there would be a couple of ground rules. We will get the Board refamiliarized with Mr. Meppens project so that everyone, including the gallery understands his project a little better. We will then allow the public to speak, but I would like to limit the discussion to 6 minutes per person, which will be done with a timer. If you are not quite finished and the time goes off, someone else will get a chance to speak and then we will revert back if you need more time.

7:18 David reconvened the **Public Hearing for file #2017-4**, Mark Meppen 13190 State Route 295 for a Special Permit to build a warehouse. David asked Mr. Meppen to help flesh out the project. Mark stated that there is an existing small commercial building on the property and he would like to move his plumbing and heating business there with the addition of a 60'x80' building, as well as some additions to the small existing building. The warehouse will be solely for servicing HVAC customers. It will be a warehouse operation with no employees or public access. He would call it storage but the Planning Board calls it a warehouse. The building will mainly be used in the morning and then again in the evening.

David asked if he was still requesting a waiver for septic, to which the answer was yes. David asked how far along he was and Mark stated that he had filled out the paperwork and brought it to the Zoning Officer, but in the meantime the state had changed the paperwork, so he needs to refill it out. He is not really pushing it because chances are he will not get to anything that involves that until next summer. The existing building doesn't require septic, but if he puts additions on it then he will have to put in septic or ask for a variance.

David asked if Mark was able to comply with the Site Plan and the response was that he had made it and shouldn't have any trouble complying with it. I have gone over it several times. Mark told the Board that his lawyer was in attendance with him as well, if he needed to be asked any questions and his name is Mr. Bruno.

Chairman Cooper said you have submitted the Title that you received from the county that they produce from tax sales. Do you have better title than that? Mr. Meppen said he had another that he had not submitted and introduced Mr. James Monahan from the Title Company and said he could probably speak better to that.

Christy Ransford asked what the size of the parking area was and Mark showed her the parking area on the Site Plan. He also pointed out the signage which was Christy's other question.

Sandy Haakonsen said that you mentioned you will just pick up in the morning and drop off in the evenings. Mr. Meppen said that this is true, and that there may be some days that he spends the day there but the public wouldn't be coming. (Unless someone stops by and then he couldn't stop them.)

Chairman Cooper asked why the second building needed to be so large and Mark said that he wanted to fit everything in the building and not have anything outside. There are three, bay doors in the front with a 20' section that will probably be used for an office and then in the back there will be a 20' section where he can drive straight through with the van. He could load/unload there as well as do his vehicle maintenance.

David asked James Monahan what he had found in his Title Search and whether or not the Title was secure. James said that there is nothing wrong with the deed. When they sell a property, they give a Quick Claim Deed, which is just the type of Deed they use. There is nothing wrong with it, and it is just as good as any other Title.

David opened the hearing to the public and asked if anyone wanted to speak. Cary Miller who is an abutter said he had done a lot of deed research and the deeds that allegedly lead to this property. I know Title Companies typically go back 40 or 60 years, but I actually went back to 1870 and it is pretty clear from the deeds that this particular property as alleged in 1978 which was supposed to come from the 85 acres across the street doesn't have any beginning. I would like to know what type of Title search was done prior to the 1978 deed to say that Mary Meppen, (I believe he meant Mary Dellea, H.O.) actually owned this property. Mr. Monahan said this isn't a court of law where you are challenging someone else's title to their property and also you should be very careful when you do that because there is a law called Slander of Title where you are trying to cast doubt on your neighbors' ownership of property. What we have is a Planning Board and you are not a court of law. He is coming in here and saying he doesn't think Mark owns the property. This has no bearing on what's going on here. The Board has a plan done by a licensed land surveyor and Mr. Meppen has a deed to his property and he owns it. As long as it meets your codes and setbacks that is all that matters. If you want to make a claim then make it in a court of law. Mr. Cary said he was just asking a question, and David said that Mr. Monahan tried to answer it.

David asked if Mr. Miller had anything to add, and he said he had said just about everything in writing that I had to say. The Planning Board has made a point on numerous occasions and the Code Enforcement Officer has made the point on numerous occasions that this is a Grandfathered lot and it existed before zoning and therefore is not subject to requirements meeting modern zoning requirements. In 1967 standards, this property did not meet the zoning requirements of the town in

terms of lot width and technically it would not, the way I read the zoning laws outlined in my memo. This lot was not legal in 1967, it was not legal when it was subdivided in 1970 and by virtue of Ms. Meppens, (Dellea, H.O.) estate selling this property in 1978, I don't believe that it follows that it can suddenly become legal. Canaan did make the provision for allowing people to early on have grandfathered status when there was not access from an adjacent property. David said in point of fact most of the previous lots in that area were one acre which is probably why this ended up the way it did. The zoning addresses nonconforming lots which you pointed out and which the Board knew about. That section is for nonconforming uses, a lot being used for something that is no longer allowed in current zoning is still able to continue unless it stops for two years. There is also a provision in there regarding lots that are deficient in area or frontage or width, and it says they are usable, they are buildable. My understanding is that the town would have severe liability if it tried to eliminate by statute all of the existing lots that are deficient and in point of fact could probably be constituted as a taking by the town, which the town has no interest in doing. Many of the lots around Queechy lake are a ½ acre or less, and we have to deal with them all the while, and the people that own them have to deal with them. This lot happens to be I think 1.2 + or -, so for zoning it is considered a legal lot, and it is buildable. It is not an unimproved lot, it has got rather modest improvements on it, but they are there, they exist and have been taxed. Apparently, the people that were paying the taxes on it didn't want to pay for it anymore and they let it go up for sale and that is how Mr. Meppen acquired it. The Planning Board reviewed it and they are responsible for setting the setbacks. The zoning ordinance makes it their obligation to determine front yard and side yard, and by stamping this plan as I think submitted with modifications for parking and such, the Planning Board has set the setbacks, and they exist now. I don't think what you are saying is necessarily accurate. Cary Miller said that he thinks it's a technicality. From the very beginning of zoning you are not allowed to build or expand on a nonconforming lot. David said, that is not what our law says, in point of fact this law rescinds all previous laws. Cary said that what Mr. Meppen is proposing is gargantuan, and that the Bemisses building up the road is 7,500 square feet and Mark wants to do this on a skinny little lot. He wants to make it an extra size so that he can drive through it and I think that it is totally not keeping with the neighborhood. The reason that there is zoning is to protect homeowners or business owners from having overcrowding, and what he is proposing to do is inappropriate for the size of the building.

Sandy Haakonsen said that she would think that the commercial use would be in line with the commercial district that he is in. He is in a C2 district, so it is fitting. David said that his building area falls within the square footage allowed by zoning in that zone. David said that maybe this will help and read the following:

ARTICLE XII REPLACEMENT OF EXISTING LOCAL LAW REGARDING ZONING

This Zoning Law replaces in its entirety the existing Local Law regarding zoning for the Town of Canaan which was enacted on or about June 10, 1985 and which was referred to as Local Law No. 1 of 1985, as well as all amendments thereto, including Local Law No. 3 of the year 1986, Local Law No. 2 of the year 1987, Local Law 6 of the year 1994, Local Law No. 2 of 1999 (Telecommunication Law), Local Law No. 2 of 2004 and supercedes any and all other local laws and ordinances of the Town of Canaan to the extent that same may be inconsistent with the provisions hereof.

David asked Mr. Meppen if he wanted to add anything else, and Mark said he didn't unless the board needed something else from him. David told the board if there were any questions that they had that now was the time to ask them. Christy said that Mr. Meppen had done everything that was asked of him, and she agreed that we are not a court of law and we go by our laws that are put before us. I have no further questions.

David entertained a motion to close the Public Hearing for file #2017-4, with a 2nd from Jack Steffek. All in favor.

7:37 Deliberation of file #2017-4

David made a point to say that we don't have the ability to amend a Site Plan that has been approved. If there is a problem you can argue to not approve the Special Permit which will negate the Site Plan. If you are copacetic with the Site Plan then we should proceed with the criteria for Special Permits. There are whole criteria here for that, and one of them is that it wants to be in harmony with the properties around and also with the intent of the law. Does anybody want to comment on that. Sandy said that like she had mentioned before, he has a commercial warehouse in a commercial C2 district. David said he knew that one of the long-range goals of one of the abutters was to have a Christmas tree farm with possible sales and things during the year, particularly around the holidays. I don't see that what Mr. Meppen is actually doing is going to hinder that and it seems to me that given the scope and character of what he is doing for his business it seems limited. Christy agreed and said his business is only open for certain hours and he will not be there that much. Therefore, if the abutter wants his Bed and Breakfast which is mostly nights and weekend the business will be quiet and shutdown. David said there is a farm across the way and there is normal farm traffic with that including critters and crops so it seems particularly with the goal of the appellant to keep everything under rather than to sprawl around is a rather positive thing.

Christy said that we had addressed the signage which could have been an issue. He has it lowered with the lighting. The parking has also been addressed.

David said the area of the building can't exceed 20% of the lot, and this is well below. The total area of square footage of enclosed space can't exceed 30,000 square feet and this is also well below that. Setbacks have been coordinated by the Planning Board. Sandy asked if the Planning Board had addressed curb cuts, and the answer was yes that in the resolution they asked that they be approved by the NY DOT.

David asked the Board if they thought that the Use would severely impact the properties around it and no one did. David mentioned that the business activities would mostly take place inside the building, but the scale of it is relegated by the fact there are no employees. He may get help to unload stuff, but that would be during regular business hours and should not encumber the neighbors as a practical matter. The location and size of the use is appropriate and it's possible to have it function at the scale that it is. It is on State Route 22, so if he is going to get deliveries it is logical by my belief that this is particularly appropriate.

Christy said that aesthetically speaking right now the property is an eyesore, and being cleaned up will be better.

David made a motion to approve the application as submitted, incorporating the facts that were discussed during deliberation. Second by Sandy.

The clerk polled the Board.

David: Yes

Bill: Yes

Christy: Yes

Jack: Yes

Sandy: Aye

All in favor.

Unanimous approval by the board present.

David said he will write the formal decision.

David said there is a new matter to be discussed at the next meeting, but he feels the file is deficient in that some of the plot plans and Site Plans are completely blacked out. It is also missing the amount of energy usage. He will send a letter to Monolith Solar in regards to the file.

David made a motion to adjourn the meeting with a second by Jack.

Meeting adjourned 7:49.

For the Board,
Heather O'Grady