

Hamlin Zoning Board *Minutes*
Monday, June 17, 2013
7:30 pm

The regular scheduled meeting of the Hamlin Zoning Board of Appeals was held in the Hamlin Town Hall located at 1658 lake Road, Hamlin and was called to order by Chairperson Norman Baase at 7:30 pm with the location of the fire exits and AED explained for those present.

Present: Norman Baase, Rocky Ellsworth, Ed Haight, Jerry Hoffman, and Klaus Pohl
Also present: Chad Fabry Building Inspector, Steven Baase Highway Superintendent, Jason Baxter Town Board Councilperson, Ed Evans Conservation Board member. Support Board Attorney Ken Licht, excused.

Residents present: Jennifer DiLucia, Cassandra DiLucia.

Applicant representatives: Douglas Heath attorney representing Mike-Matt Lands Partnership.

Approval of the May 20, 2013 minutes. Motion made by Jerry Hoffman, seconded by Klaus Pohl. Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, and Klaus Pohl aye. Motion carried.

PUBLIC HEARING

No applicants this month.

AGENDA

JOHN AND JENNIFER DILUCIA 149 MORTON ROAD, HAMLIN

John and Jennifer DiLucia are seeking relief from Town Code §520-41C (a)[1]. They are asking to have chickens on less than 1 acre of land on property located at 149 Morton Road, Hamlin.

Jennifer states that they would like to have about 6 chickens (no roosters) for eggs and then eventually meat. They try to follow an Organic wholesome diet and they like the GMO eggs which can be costly this will also help them save money as her 5 children consume quite a lot of eggs. They reside on approx. ½ acre of land which backs to farmland and woods. The entire backyard is fenced in with a 6 ft. wood privacy fence on all sides. Norman Baase asked if she had ever had chickens before. She stated that she has a book she has been reading and it has been helpful. Norman Baase asked where the henhouse/chicken coop would be placed in the backyard. Jennifer said in either a 10 x 10 or 12 x 12 area. Norman also stated that it would have to be in a fenced in enclosure to keep the chickens in and the wildlife, fox, and coyotes out. Klaus Pohl mentioned that animals are able to dig under fences. Chad Fabry also mentioned raccoons which can also dig under the fence to get at the chickens. Jennifer states that she is trying to understand the rotation of chickens for laying. She might want to start out with 5 -6 and then get a few more. But no more than 10 chickens at one time.

A motion was made by Rocky Ellsworth, seconded by Klaus Pohl to grant John and Jennifer DiLucia relief from Town Code §520-41C(a)[1] to have no more than 10 chickens. A Public Hearing will be scheduled for Monday, July 15, 2013, with the stipulation that a site visit must be completed to see where the coop and the new fence will be located. This site visit will be published in the newspaper. Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, and Klaus Pohl aye. Motion carried.

After the motion was carried, Jennifer decided to postpone until next year to start her chickens. Klaus Pohl suggested she make new application in January 2014, to give her enough time to go through the Town process so she can start in the spring.

A motion was made by Rocky Ellsworth, seconded by Klaus Pohl to rescind the previous motion. Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, and Klaus Pohl aye. Motion carried.

AGENDA

MIKE-MATT LANDS PARTNERSHIP 1147 MOSCOW ROAD, HAMLIN

Mike-Matt Lands Partnership is seeking an opinion concerning Ozzie's Corners regarding if a variance is required for the 2 buildings on the lot located at 1147 Moscow Road, Hamlin.

Douglas Heath was present representing the Mike-Matt Lands Partnership in their request of the Zoning Board of Appeals. He stated that he has practiced real estate and municipal law in the surrounding area for 27 years.

He had made application to the Planning Board at the June 3, 2013 meeting asking to recreate and restore the 5 acre parcel to its original exact dimensions which was the part of the Jensen Subdivision, Lot #10. In turn the Planning Board referred him to the Zoning Board to determine and define primary use of the 2 structures on the property.

He stated all his clients want is to have a line drawn, so they may sell the property in the future. If and when there is a new owner, the new owner would have to make application to the Town for variance, permit, approvals etc. if a non allowed use was to be presented. It was brought up that even now the property could be used as a single family home, a club of some kind, dart club, book club, offices such as Law, Doctor, Vet, etc. even a golf course as hole #9 and the putting green are still existing on the property. The property will remain Agricultural and the buildings can legally be used for AG storage.

Douglas Heath states we are not asking for a special use permit or an area variance or any use variance with respect to the property. Chad responds that is an accurate statement.

Doug Heath states we have asked the Planning Board to go ahead and approve and move forward with our application to subdivide this parcel. There is no dispute that it is a lawful sized parcel. All bldg. improvements meet all setback and size requirements. They were lawfully permitted structures at the time they were built. The septic system was approved by the Monroe County Health Department. There is no question in respect of construction, design or setbacks of the status of the property. The R-VL district at the very least right now for whatever is permitted in the R-VL district. Chad responds that is correct.

Doug Heath states my client is just looking to subdivide and draw a line on a map. In my opinion this issue is confused and clouded between our right ability to request subdivision and whether or not this piece qualifies as a minimum size parcel within the zoning district that tied with a suggested permitted proposal use if improvements of property. Other use would need application. This is the only application to draw this line to re-subdivide back to the way it was originally, Lot #10 of the Jensen Subdivision.

At the Planning Board meeting on June 3, 2013 it was brought up as to which was the primary and what was the accessory use of the buildings. Doug Heath asked at that time if they were accessory buildings to the house. The Planning Board authorized the subdivision in Dec. 2012, clearing the way for our purchase. The Planning Board essentially created 2 non conforming buildings and took away primary use. Then it was suggested that the primary was the clubhouse for the golf course, it was also suggested that they are now accessory structures to the farm in the AG district and are exempt. We asked to keep the issues separate and permission to subdivide. The Planning Board wanted the definition of primary use to make sure the buildings are not non- conforming. They then sent the matter to zoning to interpret the definition of primary use, not seeking opinion on variance. Both of the attorneys present objected to coming to Zoning Board. They both felt that the question of primary or not had no bearing on whether or not we were entitled to draw a line on a map.

Chad Fabry comments if you refer to NYS code, they never say primary structure. Structures are defined by the use not by the structure. Whether primary or accessory use, there are allowed uses without any special permission whatsoever, but legally meet all setback requirements. My position has not changed. There is no reason not to subdivide. The issues are clouded between the subdivision approval and forecasting a site plan approval. The Planning Board is not clearly looking at the application that is before them, which is to subdivide a piece with 2 legal structures that had been built legally and approved. I went through the property records today and we have fire inspections, health inspections and permit inspections. We know who they are, we know what they are being used for and it has been that way for 10 – 12 years. I made it clear in a letter to the Planning Board that it was illegal and that this subdivision should not be delayed any further. I can't make my decision any clearer than that.

Norman Baase stated that the Zoning Board has no legal right to give an opinion one way or another.

Jerry Hoffman agreed with Chad on the issue.

Norman Baase said that it should just be subdivided off.

Ed Haight commented if they had put the line back on the map and tomorrow continue to operate that property as 2 pieces in AG; those are acceptable structures to be used in agriculture.

At this time a motion by Klaus Pohl, seconded by Jerry Hoffman was made that in the case of Matt-Mike Lands Partnership, at the present time this appellate body does not have the legal authority to act on the matter before us at this time sent to the Zoning Board to interpret the definition of primary use under the Hamlin Building Code on the Mike-Matt Lands Partnership Subdivision.

Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, and Klaus Pohl aye. Motion carried.

DISCUSSION

Jason Baxter, Town Board Councilperson, reported that Steven Lauth has been appointed to fill the position vacated by Ron Breslawski on the Planning Board. His appointment fulfills Ron's term which ends December 31, 2019.

There will be a spaghetti dinner held on June 22, 2013 at 7:00 pm in Merritt Hall. The proceeds of this dinner will benefit a fireman's child.

Ed Evans stated that there is no information from the Conservation Board.

ADJOURNMENT

A motion to adjourn was made by Ed Haight, seconded by Klaus Pohl and Jerry Hoffman. Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, and Klaus Pohl aye. Motion carried.

The next scheduled meeting of the Hamlin Zoning Board of Appeals will be held on Monday, July 15, 2013 at 7:30 pm. Deadline for all applications is July 3, 2013.

Minutes respectfully submitted by,

Cheryl J. Pacelli
Zoning Board Support Clerk