

TOWN OF GRANBY ZONING BOARD OF APPEALS

Meeting Minutes

August 22, 2017

AGENDA: Borasky Public Hearing
Dingman Public Hearing
Regular Meeting

MEMBERS: Michael French, Chairman
Peter LeoGrande
Patricia Simmons
Tom Thompson
Sandra Farrands

ALSO PRESENT: David and Tracy Dingman, Mr. and Mrs. Sokolic, Michael Borasky, Town Attorney Matthew Ward, Deputy Supervisor John Snow and Town Councilor Tracy Doyle.

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PUBLIC HEARING

Use Variance Request

Michael Borasky – 103 State Route 48, Phoenix
Tax Map #302.00-01-27

Chairman French opened the Hearing at 7:00 pm and explained that Mr. Borasky had requested a Use Variance to build a garage on his property which had been zoned residential when he purchased the house and was rezoned as CIT more than ten years ago. The Zoning Ordinance does not allow a residential accessory structure, a garage, to be built on a lot zoned CIT. Mr. Borasky’s first application also required two area variances for front and side setback which the Board denied because the requests were substantial. The use variance was also denied for the location originally submitted. Mr. Borasky is now requesting only a use variance for a proposed garage location that is compliant with all the setback requirements. Mr. Borasky stated that the garage has been relocated to the rear yard and has 15’ of separation, compliant with fire code, between the new garage and the existing attached garage. The CEO had also supplied an updated use variance referral paper that indicates only a use variance is required of the ZBA in order for the applicant to proceed with the building permit. Member Thompson questioned the type of septic system that is drawn on the site plan and whether he had adequate distance to the garage. Mr. Borasky stated that it was a raised bed system and that the garage is 20’ from the toe of slope of the raised ground. Chairman French opened the Hearing to public comments, there were none, and the Hearing was closed at 7:04 pm.

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REGULAR MEETING

The Regular Meeting was opened at 7:04 pm.

Michael Borasky – *Without any further discussion from the Board Members a **motion** was **moved** by Member Thompson and seconded by Member Simmons to approve the*

requested Use Variance and to extend a non-conforming use by building a 24'x28' personal use garage in a CIT district located in the rear yard as submitted on site plan dated 8/22/17, on property located at 103 State Route 48, Phoenix, NY 13135; Tax Map # 302.00-1-27 is hereby **GRANTED**.

A roll call vote was taken:

Michael French, Chairman Aye

Peter LeoGrande, Member Aye

Patricia Simmons, Member Aye

Tom Thompson, Member Aye

Sandra Farrands, Member Aye

5 AYES, 0 NAYES – Resolution 2017-10 – **APPROVED**

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**PUBLIC HEARING
Use Variance Request**

David Dingman – 143 Wilcox Road, Fulton
Tax Map #270.00-04-09.2

The Public Hearing for David Dingman has remained open since the August 15th meeting in order for the ZBA to consult with the Town Attorney and CEO of the Town. The ZBA members resumed discussion with the applicant at 7:07 pm. The potential owners of the property, Mr. and Mrs. Sokolic, were introduced by David Dingman, the applicant and current property owner, to allow the Board members to ascertain the intentions of the new owners. Kristin Sokolic stated that she has two horses that her family considers to be family pets and this property would allow them to keep the horses instead of boarding them. She also stated that the horses provide therapeutic benefit of relieving anxiety. They do not plan on building or changing the property layout because the existing pole barn is sufficient in size and adequately placed along the driveway for ease of access. The driveway is approximately 500' long which provides a substantial setback from the roadway and neighbors to lessen any impact the horses may have on the neighborhood. The property is 14 acres in size and shaped like a long rectangle, the property in the rear is out of eyesight from the road and will provide plenty of paddocks and pasture land. David Dingman stated that his property is ideal for what the Sokolic's intended use is because Granby is and has always identified itself as a rural and agricultural Town. He purchased his property for that reason and although he had never invested in animals, it came as a surprise that his property had been rezoned and now prohibits ownership of any livestock. The ZBA members explained that the rezoning had transpired more than 10 years ago and that legal notification via local newspaper, articles and interviews in the Valley News, as well as several well-attended public meetings were involved in the Town's review and approval process to update and change the zoning districts. The current Zoning Ordinance does not allow the harboring of farm animals in the R-1 district and is why a Use Variance is being requested. David Dingman stated that the five criteria the ZBA has to base their determination on were discussed at the last meeting and he was not in agreement with the statement that the situation is self-created. He emphasized that the Town changed the usage allowed on his property and that is what created the hardship. Chairman French introduced the Town Attorney, Matthew Ward, and asked for his legal interpretation of the Town Zoning Law in regards to Mr. Dingman's application. Attorney Ward replied that based on the current Zoning Ordinance, the requested Use Variance should not be granted. The issue is cut and dry from a legal

standpoint, but the ZBA has the ability to mitigate and weigh any attributing factors as it relates to this single application. He also stated that he was sympathetic to the desire to have access to the horses for the family instead of boarding and the limited time it yields, and discussion by the Town regarding present district lines may be warranted, but as the Town Attorney, he firmly advises the Board to deny the applicant's request to allow animals on a property zoned R-1.

Chairman French explained that the Town has had several issues with how the zoning districts were formed and the limitations the residents have experienced due to the changes in the allowable uses for each district. When Wal-Mart was built the Town began a process to re-organize and update the zoning document to accommodate the hope of a newly formed business district and increase the value of the Town. They also wanted to protect the valuable natural resource of the Oswego River, and the properties that lie therein, as to increase that existing housing stock and potential for development. In hindsight it appears that the future plan they envisioned has not come to fruition and has instead prohibited the rural enjoyment of the current property owners. The Board members discussed the character of the property – located along railroad tracks, backs up to a stream and vacant land, very few neighbors, and a large parcel at 14 acres that was purchased before the change of zoning to R-1. They were in agreement that the property was more favorable for the activities of a rural and agricultural nature than the activities an R-1 zoning designation elicits. Mr. Dingman asked if the property was considered at all to be grandfathered for the farming that has occurred in the back areas for years. The Attorney replied that if chickens or other livestock had been harbored on the property then it could be considered a pre-existing use but farming in general is not specific enough to include livestock and the difference is depicted in the Zoning Ordinance by different line items. Member Thompson stated that it was becoming clear that the Town may have imposed a hardship onto the residents' years ago and is only now been brought to light by the Dingman's application. Chairman French was in agreement that many areas in the Town were affected adversely by the changes made especially since the plan didn't develop in the manner that was forecasted. Chairman French stated that the Town needs to reevaluate the direction for growth and realize the hardship the current regulations are imposing onto the residents and make changes. The existing line that separates the R-1 and A/R zoning districts is a railroad track that runs north to south through the Town – was it arbitrarily chose? Would State Route 48, which also runs north to south through the Town, be a better border between the zones? It may not impact as many of the rural properties with a restrictive R-1 status as the current boundary line does.

The issue before the ZBA is only the request for a Use Variance allowing horses on an existing R-1 zoned parcel. If the Board grants the Variance, the new owners would still need to appear before the Planning Board for a Special Use Permit, which is a process required in the A/R district which allows for harboring of livestock. The ZBA clerk, also the Planning Board clerk, explained the process and timeframe briefly to the Sokolics' and supplied them with contact information. Chairman French opened the Hearing to the public for comments as follows:

~ Town Councilor Tracy Doyle commented about the redesign of the Town zoning and that it had been centered on the Wal-Mart project and the newer subdivisions developed along the river. The arbitrarily chosen boundary line being the railroad tracks allowed enough property to provide a wide buffer zone between the

agricultural odors and noises and the newer costly homes. It also provided property to expand the residential developments west. Mr. Doyle agreed with ZBA Member Thompson in that the Town had created the hardship on Mr. Dingman in restricting his usage of a large property to only a single residence. He stated that the zoning law needs to be tweaked and that the Town Board has the authority to change the Town laws. He concluded by stating he was in favor of the Use Variance request and urged the ZBA to approve it.

With no further public or board member comments, a motion was moved by Member Thompson to close the Hearing at 7:25 pm. The motion was seconded by Member Simmons, all were in favor and the motion carried.

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REGULAR MEETING

The Regular meeting was reopened at 7:25 pm.

David Dingman – Chairman French was concerned with the precedent that may be set with an approval of this Use Variance and solicited advice from the Town Attorney. Matt Ward replied that each application request before the ZBA is deliberated and decided upon by its individual merits therefore a precedent which implies that an earlier decision becomes an example to be followed is erroneous. The outcome of such an approval though could be that more residents apply for non-permitted uses and are referred to the ZBA by the Codes Enforcement Office. Member Thompson commented that any requests in the future would be based on the situation encountered on the parcel in question and decided similarly if the property warranted such consideration. *Without any further discussion from the Board Members a motion was moved by Member LeoGrande and seconded by Member Thompson, to accept the Use Variance request to allow the stabling of horses for non-commercial purposes on property located at 143 Wilcox Road, Fulton, NY 13069; Tax Map # 270.00-04-09.2 is hereby **GRANTED.***

A roll call vote was taken:

Michael French, Chairman Aye
Peter LeoGrande, Member Aye
Patricia Simmons, Member Aye
Tom Thompson, Member Aye
Sandra Farrands, Member Aye

*5 AYES, 0 NAYES - Resolution 2017-11 - **APPROVED.***

MINUTES

A **motion** was **moved** by Member LeoGrande to approve the meeting minutes for August 15, 2017. The motion was seconded by Member Simmons, all were in favor without further discussion and the **motion carried.**

ADJOURN

With no other business before the Board a **motion** to adjourn at 7:31 pm was **moved** by Member LeoGrande and seconded by Member Farrands, all were in favor and the **motion carried.**

Respectfully submitted by:

Lisa Somers, ZBA secretary