

LIVONIA JOINT ZONING BOARD OF APPEALS
Meeting Minutes - January 21, 2013

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PRESENT: Chair. P. Nilsson, M. Sharman, B. Weber, Gwen Cole, Kevin P. Masterson - Code Enforcement Officer, J. Campbell - Town Attorney & Tammie Schwerzler - Recording Secretary

EXCUSED: C. Rider

OTHERS PRESENT: Attorney Gregory Nearpass of Nixon Peabody, Rick Bennett, Robbyn Haak, Joanne Palmer, Chuck Casaceli, Don Simpson, Don Richards and several residents

- AGENDA:**
- Michael & Donna Viscosi
 - 5892 Big Tree Road
 - Conditional Use permit - Accessory dwelling unit
 - Area Variance - Greater than 40% of principal dwelling unit

 - Ronald Munson (Finger Lakes Timber Co., Inc.)
 - 6273 Decker Road
 - Interpretation
 - Previously issued Conditional Use Permit

 - Other business
 - Jerry Gilbert correspondence

Chair. P. Nilsson opened the meeting at 7:05 p.m. and welcomed the board's two new members: Bill Weber and Gwen Cole. He then asked the board members to review the December 17, 2012 meeting minutes before them. Hearing no comments, he asked for a motion to adopt.

M/2/C (M. Sharman/G. Cole) to accept the December 17, 2012 Livonia Joint Zoning Board of Appeals meeting minutes as submitted.

Motion carried 3-0-1. Bill Weber abstained.

Recording Secretary read aloud the first Legal Notice:

RE: Application of **Michael & Donna Viscosi** for a public hearing for a Conditional Use permit and an Area Variance pursuant to Section 150-17B & C of the Zoning Ordinance of the Town of Livonia. The Conditional Use Permit is requested for an accessory dwelling unit, subject to the requirements of Article VII, Section 150-60, according to Section 150-31 D (1) of the Town of Livonia Zoning Code. The Area Variance is requested to allow an accessory dwelling unit, which will violate the maximum allowed 40% of the area of a principal dwelling unit according to Section 150-60 D of the Town of Livonia Zoning Codes. The property in question is located at 5892 Big Tree Road, Livonia, New York and is zoned Neighborhood Residential Zoning District (NR).

Chair P. Nilsson polled the board members for site visit:

Chair. P. Nilsson	-	yes
M. Sharman	-	yes
B. Weber	-	yes
G. Cole	-	yes

Chair. P. Nilsson stated that he and the other board members have reviewed the application and would now like Mr. Viscosi to state his request for the record.

Mike Viscosi stated that he had recently built a new 27' x 37' two-story garage on his property at 5892 Big Tree Road. Because the property is on the lake it is not possible to dig a basement so he's considering the use of the 2nd story garage to be similar to having a basement storage area. He's going to use it as (for a lack of better words) a "man cave", with couches, a tv, a bathroom. It will be carpeted, have no kitchen and no bedrooms. He may let friends and family stay in the space on the 3rd of July. He feels although he has the right to use it as a rental property, that is not his intention. He will only use it seasonally. He informed the board that there are two very large garages on his street that are accessory dwelling units, so he's not asking for anything different.

B. Weber asked Kevin Masterson if a Certificate of Occupancy would be required as part of the application process.

Kevin's answer was yes, it would still be considered as habitable space. And if Mike decides to go a step further and constructs bedrooms or a kitchen, there would be code requirements that he would be obligated to follow.

B. Weber questioned whether or not the board could put conditions on this application if they choose to. He'd like to see Mr. Viscosi come back to this board if he chooses to do any interior alterations, ie: bedrooms, kitchen.

Chair. P. Nilsson said yes.

Masterson informed the board of the square footage calculations to determine the excess of the 40% rule.

Chair. P. Nilsson opened up the meeting to the gallery. He asked that if anyone wanted to speak, to please give their name and address for the record.

Hearing no comment he closed the public hearing portion of the meeting.

He asked for comments or questions from the board. There were none.

Kevin stated that the application had been referred to the Livingston County Planning Dept. for review and comment. They determined that it has no significant Countywide or inter-municipal impact in regard to existing County plans, programs and activities. Therefore, approval or disapproval of this application is a matter of local option.

Chair. P. Nilsson then asked the Board to review the **Area Variance** legal criteria:

- (1) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance?
- no
- (2) Can the benefit sought by the applicant be achieved by some feasible method other than a variance?
- yes
- (3) Is the request substantial?
- no
- (4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood district?
- no
- (5) Is the alleged difficulty self created?
- yes

This action has been determined to be a Type II action under SEQOR and is exempt from Review under Part 617.5 (12) and (13) of the State Environmental Quality Review.

The Board discussed the legal criteria for a **Conditional Use Permit** Application:

- (1) Will the establishment, maintenance or operation of the conditional use be detrimental to or endanger the public health, safety, comfort, morals or general welfare?
- no
- (2) Will the conditional use be substantially injurious to the use and enjoyment of other property in the immediate vicinity which are permitted by right in the zoning district of concern? Will the conditional use diminish or impair property values in the immediate vicinity?
- no
- (3) Will the establishment of the conditional use impede normal and orderly development and improvement of other property in the immediate vicinity for uses permitted by right in the district of concern?
- no
- (4) Will adequate measures be taken to provide ingress and egress in manner which minimized pedestrian and vehicular traffic congestion in the public ways?
- yes

(5) Do adequate utilities, access roads, drainage and other facilities necessary to the operation of the conditional use exist, or are they to be provided?

-yes

(6) Does the conditional use permit in all other respects conform to the applicable regulations of this chapter and other town/village laws, ordinances and regulations.

- yes

M/2/C (M. Sharman/B. Weber) to approve the area variance as submitted.

Motion carried 4-0.

M/2/C (B. Weber/G. Cole) to approve the Conditional Use Permit as requested with the condition that if the applicant wishes to change the floor plan or do interior alterations such as a kitchen, bedrooms, etc. he shall return to this board for review.

Motion carried 4-0.

Recording Secretary read aloud the second Legal Notice:

RE: Application of **Ronald Munson (Finger Lakes Timber Co., Inc.)** for a public hearing for an interpretation of a previously issued Conditional Use Permit pursuant to Section 150-17B of the Zoning Code of the Town of Livonia. This interpretation request is the result of a new site plan application currently before the Town of Livonia.

M. Sharman recused himself from the Munson application due to a conflict of interest and did not return for the remainder of the meeting.

The applicant purposes to add additional saw milling equipment to be placed within a new building and new building location on the property that was not part of the previously issued Conditional Use Permit terms. This operation was previously considered an Intensive Agricultural Operation under the previously adopted Town of Livonia Zoning code and required the issuance of a Conditional Use permit. The interpretation request before the board is whether this current proposal is within the original intent of the Conditional Use Permit. The property in question is located at 6273 Decker Road, Livonia, New York and is zoned Agricultural Residential Conservation (ARC-3) Zoning District.

Town Atty. Jim Campbell stated that this matter brought before the board is a conflict of interest for him because he has worked with Mr. Munson in the past. So before any questions arise, he is excusing himself from this matter. Atty. Gregory Nearpass of Nixon Peabody is present to represent the Town of Livonia in place of Atty. Campbell. He will answer questions on behalf of and for the board.

Chair. P. Nilsson invited Mr. Munson to come forward and explain his request to the board. Mr. Munson read aloud a written document explaining his intentions. (Please see file).

Mr. Munson has brought with him a representative from his insurance company who insures many saw milling operations. He will answer any questions the board may have.

Chair. P. Nilsson said he assumes that if this gentleman insures milling companies, then he must be comfortable with insuring Mr. Munson and his company.
Answer was yes. They insure many, many timber companies.

Chair. P. Nilsson stated that he believes the Munsons would be improving their situation and he doesn't believe adding a building would be worse. Their truck traffic would be reduced by two-thirds. He believes they are well within the approval.
G. Cole concurred with P. Nilsson.

Aaron Munson told the board that they've done a lot of work to the property to improve the aesthetics.

B. Weber asked Kevin if Code Section 150-14 (Revocation and expiration of permits) applies to this application.

Kevin replied yes. The site plan has expired but not the CUP. The CUP dealt with hours of operation, storage, traffic, noise, etc., these were all stated in previous minutes. He believes the Planning Board members feel the same; that is why they have ask the ZBA to compare the previous and new CUP application. The Planning Board Chair., Rick Bennett, is present to answer any questions this board may have.

G. Cole would like Rick to offer anything he can to shed light on this application.

Rick stated that the site plan has indeed expired but the CUP continues in operation. The question from the Planning Board is, "would adding two additional pieces of equipment and constructing and relocating a building constitute a change in a previously approved CUP or keep it the same?" The Planning Board thinks it's a better situation.

Chair. P. Nilsson opened the public hearing portion to the gallery, asking them to state their name and address if they chose to speak.

Atty. Steve Sessler, residing on Branch Street in the Village, representing Matt and Beth Graf, stated that the Graf's own property to the west and north of the Munson property in question. He feels that this is not a matter of interpretation but is a question of whether or not this business is allowed in the location. Steve explained that a nonconforming operation cannot be expanded by size. He further explained how the law has changed, according to the Town of Livonia Zoning Codes. There is no longer the definition of an intensive agricultural operation. He felt a saw milling operation is a manufacturing business by definition (Section 150-5).

Steve said that if a building permit is not obtained after receiving site plan approval then the applicant would lose the site plan. If you don't execute it, you will lose it.

He again stated that it is not about an interpretation but whether or not a manufacturing business can go into a residential community. It is impermissible under zoning law.

Flint Burley of Cleary Road asked if Mr. Munson would be allowed under the current zoning laws to raise 300 pigs.

Kevin said not 300, maybe 6, but yes, he could raise pigs on the property.

There was further discussion about the site plan. Sessler asked Kevin if he could show him a site plan map. Kevin said yes, there is one available in the Munson file in the Building & Zoning Department.

Atty. Nearpass questioned if what the board asking for today is whether or not the saw milling business is a permitted use and whether or not this use is defined under the present code? He stated that this board should tell the Planning Board what their interpretation is on the previous CUP. It doesn't matter if the previous CUP has expired, they should look at it as a new application under the present code.

Nearpass questioned if what the board is determining is an interpretation of the CUP. They may want to determine if the operation is a permitted use under today's zoning. The relevancy of the CUP may be mute if it is determined that the current operation is in compliance with today's zoning.

B. Weber asked Kevin if he would consider this a permitted use today.

Kevin said that his opinion is a timber harvest operation is an allowed use

Atty. Sessler said that if it is a permitted use then there is no need of a CUP.

Atty. Nearpass suggested the board may want to determine if it is considered an agricultural operation under the current zoning.

Chair. P. Nilsson asked Mr. Munson to explain the machinery.

Mr. Munson said the "saw mill" contains three pieces of equipment, everything needed to make a board.

G. Cole asked if they were portable.

Answer was yes.

Kevin reiterated that the building, the processing and the use are all allowed under current zoning.

Chair. P. Nilsson asked for further public comment.

Atty. Sessler asked the board to consider whether or not this business is really a farming operation. He read aloud the definition of farming operation. He felt the logs being brought in and milled is not considered farming.

He then read aloud the definition of manufacturing - any process whereby the nature, size or shape of articles or raw materials is changed or where articles are assembled or packaged.

Chair. P. Nilsson did not close the public hearing portion of the meeting. He would like our attorney to research other proceedings such as this.

B. Weber asked Mr. Munson if they are regulated by Ag & Markets.
Answer was no. Although they do consider this an agricultural use.

Ron Munson stated that when they purchased the property it was zoned commercial, it has changed since then without his knowledge. The property used to be operated as a coal business. It probably pre-dated zoning.

Atty. Sessler stated that he has viewed previous minutes. The property was never commercial. It was, however, a preexisting business.

Atty. Nearpass asked what type of sawing they do on the property now.
Munson said they do not saw on the property at this time, however, they did use a portable saw last summer. They did not construct the building nor continued the sawing due to the economy crashing.

Atty. Nearpass asked Kevin if this operation constituted an agricultural operation under today's zoning.
Kevin replied yes.

Atty. Sessler asked what the current use of the 4.6 acres was being utilized for at this time.
Munson said, "for outdoor storage of log."
Sessler said, "in regard to Livonia Code, Section 150-54, outdoor storage of materials in an ARC-3 or 5 zoning district is not an allowed use.

Chair. P. Nilsson suggested that the matter be tabled until the next meeting.
The remaining board members agreed.

M/2/C (B. Weber/G. Cole) to table the application until the next meeting.
Motion carried 3-0.

Other business:

Kevin reminded the board that at their December 17, 2012 meeting he presented to them correspondence from Jerry Gilbert regarding his displeasure in the board's decision made on an application submitted by Joanne Buchanan of Kathryn's Way. Mr. Gilbert doesn't think the public hearing should have even taken place because of improper notice.

Chair. P. Nilsson stated that it seemed to him they made their decision about the application that came before them by granting the area variance and does not feel a need to further discuss their decision.

M/2/C (B. Weber/G. Cole) to adjourn the meeting at 8:30 p.m. *The next meeting is scheduled for February 4, 2013 at 7:00 p.m.*

Respectfully submitted,

Tammie Schwerzler
Recording Secretary

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