

Livonia Joint Zoning Board of Appeals
June 6th, 2016

Present: Chair P. Nilsson, R. Bergin, G. Cole, M. Sharman, Code Enforcement Officer-A. Backus,
Recording Secretary-A. Houk

Excused: James Campbell, Attorney, B. Weber

AGENDA: ***(1) Accept and approve the meeting minutes of April 18th, 2016***

Chair P. Nilsson asked the Board for a motion. M/2/C (M. Sharman/R. Bergin) to approve the meeting minutes.

(2) Jeff & Dawn Gerstner – 5984 Decker Road Livonia, NY.

The modification of a Conditional Use Permit is requested for the expansion to existing dog kennel according to Section 150-32D (6) and subject to the requirements of Section 150-51 and the placement of a Sign according to Section 150-32C (9). The property is located in Agricultural Residential Conservation (ARC-3)

(3) Margaret Gardner/Cory Johnson – 5902 Big Tree Road, Lakeville, NY.

An area variance is requested for the construction of a 24 X 32 Garage with overhead loft storage. This proposed construction will violate the requirements according to 150-31G (2) which states the minimum side setback requirements. The property is located in Neighborhood Residential (NR)

Chair P. Nilsson brought the meeting to order at 7:00 p.m...

(2) Jeff & Dawn Gerstner – 5984 Decker Road Livonia, NY.

Code Enforcement Officer A. Backus read the Public Notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday June 6th, 2016 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Jeff & Dawn Gerstner for modification to a Conditional Use Permit pursuant to Section 150-17B and proposed placement of a Sign pursuant to Section 150-32C (9) of the Zoning Code of Livonia.

The Modification of a Conditional Use Permit is requested for the expansion to existing dog kennel according to Section 150-32D (6) and subject to the requirements Section 150-51 and the placement of a Sign according to Section 150-32C (9)

This property is located at 5984 Decker Road Livonia, New York and is zoned Agricultural Residential Conservation (ARC3).

The application is on file in the Building Zoning Department at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review.

All interested parties will be heard at this time.

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A. Backus asked for a poll of the Board for site visit:

R. Bergin: Yes
M. Sharman: Yes
P. Nilsson: Yes
G. Cole: No
B. Weber: Excused

G. Cole stated that she did make a site visit to the outside but was not granted permission to enter inside of the kennels. The teenage daughter did not wish to give G. Cole access to the kennel since her mom was away. She phoned her uncle, a kennel employee to see if he would authorize her entrance which he did not. The teenager was uncomfortable letting anyone in the kennel while her mom was away.

Chair P. Nilsson asked Jeff & Dawn Gerstner to come forward, address the Board and explain what they are purposing to do. J. Gerstner explained that they currently have an existing 17 kennels on the right side of the barn. They are requesting to add additional kennels on the left side. They started out with adding seven kennels, and as business progressed they added an additional four and then six additional kennels. Their business has increased to where they feel they could continue to add an additional four to eight kennels on the left side of the barn which is currently used for storage. Their plans are to build the same exact facility that the current kennels have. Double walls, sound proofing and insulated walls. They would like to start out with building four kennels, then increase to eight and continue increasing the amount of kennels based on their customer demand. It could take two to three years to add the additional kennels, depending on customer demand. They will only increase when it's needed as they don't want to put capital in just have the kennels sitting empty. Currently out the back of the barn they have chain link fencing. They feel the dogs bark less when they can't see each other so the plan is to build a solid wooden fence out of composite deck material. In this area they plan to build individual exercise/play areas for the dogs in hopes that if they can't see each other, there will be less barking when the dogs are outside. The solid fence should also help with sound if the dogs do bark verses the chain link fence. D. Gerstner requested to have a sign. Facing the house there is a gravel driveway, they plan to remove the first pine tree as it obstructs the view for people pulling out of the driveway. They would like to place a 3' X 5' wooden sign in that area. They offer drop off and pick up from 9:00am to 10:30am or 4:30 to 6:00pm so there are not any issues with the school bus. They also only schedule one or two cars coming at those times so there is not any traffic issues. R. Bergin asked how many additional kennels they are asking for. J. Gerstner stated that he would like to add up to an additional 16 kennels but they will only be adding 4 at a time. R. Bergin stated in regards to the original Conditional Use Permit, it did not allow for the sign. D. Gerstner stated that they had asked for a sign but it was denied. A. Backus confirmed that with the condition that no sign be erected. J. Gerstner stated that sometimes customers have a difficult time finding them. They would like to place a sign next to the gravel driveway where a row of pine trees are. They would be removing the last pine tree to remove obstruction for traffic. They would be placing the sign where the pine tree used to be, just behind the telephone pole. R. Bergin asked for clarification of the dimensions of the sign they are requesting. D. Gerstner stated they would like a 3' X 5' sign. G. Cole asked how far from the road the sign would be placed. A. Backus stated that it will fall under the Sign Code and those guidelines will dictate how far back off the road and how high the sign could be. CEO A. Backus stated the sign code 150-96A which state signs must be 10' off the property line and a maximum of ten square feet and a maximum of four feet high. A. Backus felt the Boards concerns had to do with site traffic issues and blocking views of people pulling out of the driveway. J. Gerstner stated that if he has to remove two tree's to accommodate the sign requirements, he is willing to do that. Chair P. Nilsson asked if there was an application for a Variance for the sign. A. Backus stated that they will not need a variance. The sign was not granted as a part of the previously approved

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Conditional Use Permit. M. Sharman stated he thought that the neighbors objected to a sign placement. D. Gerstner stated that the sign was denied because one of the neighbors did not want a sign due to selling their property. R. Bergin stated that on the day of her site visit she inquired about power washing the kennels due to the lack of water. She was concerned how the lack of water was going to affect the new kennels. J. Gerstner stated that they would not be power washing the kennels. The way they are designed, you don't want to put that much water in the kennels. It doesn't dry up in a timely manner and promotes an area for moisture and bacteria. The kennels are currently mopped and scrubbed down with disinfectants. D. Gerstner clarified that they were going to have their house power washed but because they have a well, the power wash company would not power wash as it would cause damage to their equipment. J. Gerstner stated that they have plenty of water and have approximately two gallons a minute flow rate. G. Cole asked for clarification regarding environmentally, if they add more dogs how they will handle the additional dog waste. J. Gerstner stated presently he composts the dog waste by working into the soil and it has not been a problem to this point. R. Bergin asked if there were any complaints regarding the smell. No, there have not been any complaints. J. Gerstner stated that he is going to start using the Red Wigglers compost worms to help with the dog waste as they eat their weight in dog waste every week. The dog waste has not been a problem so far and if the worms can break it down even further, that would be a benefit. M. Sharman asked if the Gerstner's have letters from the neighbors. D. Gerstner stated that they did not have any letters from the neighbors, and one of the neighbors is present at the meeting. The other neighbor was not home when she went to their house as they work odd hours. R. Bergin asked if there was a way to get letters from the other neighbors. D. Gerstner stated that she is petrified of the neighbor's dog as it chases them into their house when the dog is on their own property. R. Bergin asked if she could call the neighbor. D. Gerstner replied that she doesn't have their phone number. R. Bergin asked if she could get the phone number. D. Gerstner stated that she would try her best to get the phone number. R. Bergin stated that consent letters from the neighbors would make a big difference as far as her vote was concerned. G. Cole stated that in fairness that the Gerstner's have known this for a long time. The memo that was sent to the Gartner's dated April 4th, 2016 encouraged them to provide letters from the neighbors for the Boards' review. D. Gerstner's stated that she did speak with one of the neighbors and they stated that: "She did not have a problem with it and she thought it was fine, and she is a dog lover and once in a while she might hear a dog bark but not to the point of it being an issue". The neighbor did not want to sign anything for the Board Meeting. G. Cole confirmed that this is not the neighbor that has the dog that she is frightened of. G. Cole asked if the neighbor that was present was speaking on their behalf. D. Gerstner stated that one of their neighbors was present, but was not present on their behalf. M. Sharman asked J. Gerstner if they are too crowded now and that is why they are here asking for additional Kennels. J. Gerstner stated that they are not too crowded because they are limited by the number of Kennels they can have. They are hitting capacity and at the point where they would like to expand again to accommodate the increase in business. M. Sharman confirmed that the Gerstner's plan was to add four more additional kennels at a time to meet the need of increased business. G. Cole asked for clarification on how many kennels there are currently. They currently have seventeen kennels. Currently they only have one dog that is theirs. R. Bergin asked if they sell puppies at their location. There are no puppies or ones being sold at the location. G. Cole asked for clarification on the number of kennels they are asking to add. J. Gerstner stated that they are asking to add an additional sixteen kennels. Looking at the diagram, if you go straight back to the left he will be putting a door. He will put four kennels, then another four and a common hallway. As you come back down the hallway towards the front, you can take a left and go down that hallway where he will add an additional four and finish that section with additional four to equal the sixteen they are asking for. He plans to first build the main hallway and put up doors and finish four kennels to start with, slowly work his way forward.

Chair P. Nilsson asked the Board if there was any further questions, being none the Chair opened the meeting up for questions from the public. Chair Nilsson asked that they state their name, address and

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state your questions and/or concerns. Jeff Rock of 5974 Decker Road, Livonia who lives just west of the Gerstner's property came forward. Mr. Rock stated that he had some observations regarding the Gerstner's dog Kennel. He moved to his property in November of 2014. He knew the previous owners to his house so they were aware that there was a dog kennel located at 5984 Decker Road. The previous owners stated that there were some noise issues at times. They were against having the kennel located there, but it was already there prior to their ownership. Mr. Rock stated that at that time he wasn't concerned about the noise issues. He wanted to state that the Gerstner's seem to be friendly and keep the place in good shape. Mr. Rock's only issue is that when the dogs are outside there is a lot of barking. It doesn't happen all the time, but most of the time when the dogs are outside there is some dog barking. Mr. Rock stated that he was looking through old Meeting Minutes and found that the October 17th, 2011 meeting minutes stated that a privacy fence was to be installed around the chain link dog run. He stated that he has observed off the back of the kennel, there is approximately a twenty foot span of privacy fence that goes out, and then it is all chain link outside of that. He questioned if the privacy fence was ever completed. If he is out in his back yard or would like to walk out to the woods in back of his property, the dogs will see him and start barking. It doesn't bother him unless he is going out to hunt, then it becomes very annoying. Mr. Rock stated that he doesn't have any problems with the Kennel in general. His main concern now is with the possible increase in kennels, the potentially for increased barking and noise. He is aware of the sound proofing and when the dogs are inside he doesn't hear the dogs barking, only when the dogs are outside. He stated that if they have an outside exercise area, he is concerned how they would be able to control the sound. The noise from the dog Kennel impacts the neighborhood. He is also concerned about the increase in traffic due to the expansion. Mr. Rock stated that he is against the placement of a sign. If he decides to sell his house, and prospective buyers see the sign for the dog Kennel, the perception is that there is going to be noise. He feels that if he did have to sell his property, he would not be able to sell it for the price he would need to due to the perception of noise from the kennel. He stated that to his knowledge the sign requirements, they would have to come ten feet to the west of Buckley's property which would put the sign in the middle of the driveway. Mr. Gerstner stated that he was unsure of what the requirements are for the sign as they have not looked into that yet. Mr. Rock stated that he is also concerned that if the expansion is allowed now what the limit is going to be. He quoted that the legal notice stated that they were asking to expand the kennel, adding employees and asking for a sign. Mr. Rock stated that the March 14, 2016 Planning Board Meeting Minutes stated that J. Sparling stated the Gerstner's have only one neighbor that is relatively close. That is incorrect, there are two nearby neighbors, one on each side of the Kennel. Mr. Rock stated that at this point he is not in agreement with having additional dogs.

With no other discussion, Chair P. Nilsson closed the public hearing part of the meeting.

M. Sharman asked if there was anything from the March 14th, 2016 Planning Board Meeting that should be discussed. He also asked if we had received the letter from the dog warden. A. Backus replied that we have not received any letters. On the second page of the April 4, 2016 memo, it asks the Gerstner's to respond to the following comments from the Planning Board. M. Sharman asked why such a big sign was being requested. D. Gerstner stated that she didn't know. She went online and found that is what other kennels were using, she is not asking for it to be that large. She wasn't sure what the requirements were so she picked an average of what other Boarding Kennels were using. J. Gerstner commented that they would like a sign so customers coming down the road can see where they are located. D. Gerstner stated that she is aware of a neighbor located on their road that was not aware that they existed, he now boards his two dogs with them. Their address is located on the mailbox, but customers are looking for a sign. M. Sharman asked if there is only going to be one dog per compartment. D. Gerstner confirmed one dog per compartment, unless they are family. M. Sharman asked if the compartments are enclosed so there is no visual between dogs. D. Gerstner stated that there are floor to ceiling walls between each dog.

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Each compartment has a door with a little window for the dogs to look out and for them to be able to view the dogs. The door is a two foot opening with wire fencing with a clear plastic panel on the bottom 18" X 24", so the dogs can see out. Above that are white PVC boards that give a beaded look between the bars as on one occasion a German Shepard pushed his way out of the bars and ate the other dog's food. A. Backus asked to read the sign code. One home occupation sign shall be permitted for an approved home occupation. Such sign shall be no larger than ten square feet, and sign area shall not be closer than ten feet from any property line. If a ground sign, it shall not exceed four feet in height above the natural grade on which the sign is located. The sign may contain only the name and or name of business and or occupation of the resident. A Sign Permit is not required. J. Gerstner confirmed that the sign could be a 3'X 3'. Ten feet from the property line will place it in the middle of the driveway. Chair P. Nilsson asked if they were looking for the sign for advertisement or for location. A simple name plate on the mailbox would serve as a location marker for customers. J. Gerstner stated that their mailbox is located on the other driveway. They would have to move the mailbox to the gravel driveway. D. Gerstner stated that she would really like to have a sign for their business. G. Cole asked Jeff Rock the neighbor present about the privacy fence being installed. J. Rock commented that he is aware of the privacy fence coming out about twenty feet off the back of the Kennel but doesn't not surround the dog run. G. Cole agreed and asked the Gerstner's why that was never completed. J. Gerstner stated that those areas were meant to be temporary exercise areas as they did not have an exercise area prior. This was located around the original runs that were located around the back. He plans to remove all those outdoor runs. He will still have the existing chain link up against the back of the barn, but will add the solid fencing in that area and create runs in that area. M. Sharman asked if there will be no visual exposure to the neighbors in any direction. J. Gerstner stated that was correct, all directions will be blocked off from visual exposure. G. Cole stated that her current concern was that the Gerstner's are not currently complying with the previous agreement. J. Gerstner agreed that he was not complying with the previous agreement regarding the privacy fence.

Chair P. Nilsson asked the Board if there was any further discussion, being none the Chair P. Nilsson asked the Board to go through the Conditional Use Permit Criteria:

1. Will the established, maintenance or operation of the conditional use be detrimental to or endanger the public health, safety, comfort, morals or general welfare? Yes

Neighbor(s) are concerned about property values especially relative to a sign. If people know about the Kennel, that may discourage the sale of their property.

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? Yes

Neighbor(s) are concerned about their property values.

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 minimizes pedestrian and vehicular traffic congestion in the public ways? Yes

Scheduling drop off and pick up times to avoid congestion.

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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

They are pre-existing.

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 regulation? Yes

The Dog Kennels are a permitted use.

J. Gerstner wanted to clarify that the Kennels that are beyond the wooden fence, never have a dog unless they are accompanied by the Gerstner's and it is only one dog at a time. That area is for the dogs to go bathroom. There are only two dogs that are allowed access to this area, that is the Gerstner's dog and a relative's dog but they would still be inside the wooden fence area. They would only be able to see someone if they were south of the property. That area is meant to be used for exercise & play only and they are present at all times. There is not a lot of barking as they do not allow it. The Kennels that are used on a regular basis have pea gravel in that area for easier clean-up for bathroom use. Everything beyond the wooded fence will be completely eliminated from this point forward and will be replaced with a sturdier enclosed fence so that the dogs will not have visual to other nearby properties. Chair P. Nilsson stated that if the Board does grant approval to their proposal, they will require that the outside fence area be completed prior to any inside expansion work done. M. Sharman stated to be perfectly clear, there would be absolutely no dog being kenneled that could see southerly? D. Gerstner stated that if the dogs looked east, west and south they would be looking at the wooden fence.

Chair P. Nilsson asked if there is any further discussion by the Board.

Chair P. Nilsson suggested that the Board postpone further consideration of this request until the next Zoning Board Meeting which will be held on Monday June 20th, 2016 with the understanding that the Gerstner's will attempt to get supporting documentation from their neighbors. The Public Hearing will remain open until the next meeting date. M. Sharman wanted to make sure the Gerstner's received the Memo from A. Backus regarding the Planning Board's suggestions. The Gerstner's were emailed a copy of the Memo from CEO, A. Backus on April 4th, 2016 at 10:20 am. D. Gerstner wanted to advise that anyone is welcome to come and walk through the Dog Kennel. She apologized that G. Cole was not allowed in. Her kids know that are not allowed to unlock the doors and let anyone in without permission. G. Coles stated that she appreciated that but Gerstner's daughter did contact D. Gerstner's brother and he did not grant her access. D. Gerstner explain that she and J. Gerstner are the only ones who have keys, but she invited anyone who is interested to come visit.

Chair P. Nilsson stated that they will adjourn this portion of the meeting until June 20th for further discussion.

(3) Margaret Gardner/Cory Johnson – 5902 Big Tree Road, Lakeville, NY.

Code Enforcement Officer A. Backus read the Public Notice:

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PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday June 6th, 2016 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Margaret Gardner for an area variance pursuant to Section 150-17C of the Zoning Code Of Livonia.

An area variance is requested for the construction of a 24'X32' Garage with overhead loft storage. This proposed construction will violate the side setback requirements according to Sections 150-31G (2) which states the minimum side setback requirements.

This property is located at 5902 Big Tree Road, Lakeville, New York and is zoned Neighborhood Residential (NR).

The application is on file in the Building Zoning Department at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review.

All interested parties will be heard at this time.

CEO A. Backus asked for a poll of the Board for site visit:

R. Bergin: Yes
M. Sharman: Yes
P. Nilsson: Yes
G. Cole: Yes
B. Weber: Excused

Chair P. Nilsson asked the person representing **Margaret Gardner – 5902 Big Tree Road, Livonia, NY** to come forward and address the Board and explain what they are purposing to do. Cory Johnson and Harry Gardner came forward and explained that they are asking for a three foot variance for the construction of a garage. The current building that is there now was built approximately eighty years ago by Mr. Gardner's Great Grandfather. It is Mr. Gardner's Mothers wish who is eighty one to continue to live the rest of her life in her own house. Mr. Gardner and his wife plan to sell their house and move in with Margaret Gardner. Mr. Gardner would like some extra storage above the garage. When the building was constructed, it was built right on the property line. Facing the road, the building is approximately one foot from the property line. Mr. Gardner spoke to the neighbors on both sides and they don't have any issues with the proposed construction. Out of respect, he would like to move the new garage three feet off the property line giving the one neighbor more room near her driveway. Chair P. Nilsson stated that this was a good decision as in the future neighbors may not allow access from their property and the extra room will be needed to maintain the garage. Chair P. Nilsson verified that the side setback requirement is 9' due to the 60% rule. R. Bergin confirmed that they are asking for a 6' variance. Chair P. Nilsson asked about the loft storage, confirming they are building a one and a half story garage. Yes, Mr. Gardner would like storage above the garage instead of paying for mini storage fees for his belongings. From where the dwelling is located, he plans to come closer to the dwelling so that the garage is not so close to the road. CEO A. Backus stated that the drawing looks like the proposed construction is going to go closer to the road from the current garage. It's actually going to be closer to the road than the current building. G. Cole confirmed that the construction will be 13' closer to the road than the current building. G. Cole wanted clarification regarding the elevation. It will be approximately a total of 20' to the peak of the roof. R. Bergin asked if they ever intend to have an accessory dwelling above the garage. Mr. Gardner confirmed that it is going to be used strictly for storage. Mr. Gardner plans to have the exterior

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of the garage match the cedar siding on the house. M. Sharman brought up that the neighbors are currently happy. If your only 3' from the neighbor to the east, it's going to be difficult to maintain the garage. M. Sharman felt that 3' was not enough room. A. Backus stated to keep in mind that it would be a fire rated wall at that distance from the property line. You would want to plan your windows accordingly. You would have to maintain 5' from the property line not to be required for fire rated walls. There would also be restrictions on overhangs and windows. M. Sharman stated that if he moved to 5' he could avoid those requirements. Chair P. Nilsson closed the public hearing part of the meeting, since seeing nobody present.

Chair P. Nilsson asked the Board if there was any further questions.

Chair P. Nilsson asked the Board to go through the area variance 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 be sought by the applicant be achieved by some feasible method other than a variance? No
3. Is the variance substantial? Yes
4. Will the proposed variance have an adverse effect of impact on the physical or environmental conditions in the neighborhood? No
5. Is the alleged difficulty self-created? Yes

Chair P. Nilsson asked the Board for a motion. M/2/C (M. Sharman/R. Bergin) to approve proposal With a minimum setback on the east side of 4'.

Chair P. Nilsson asked if there is any further discussion by the Board.

Chair Nilsson asked for a motion to adjourn the Livonia Joint Zoning Board Meeting at 8:03 pm.
M/2/C (M. Sharman/R. Bergin)
Motion carried: 5 to 0

Respectfully submitted,

Alison Houk
Recording Secretary