

TOWN OF GAINES PLANNING/ZONING BOARD MEETING  
SEPTEMBER 4, 2013 7:00PM

Present: Chairman Michael Grabowski, Vice-Chairman Raymond Burke  
Members: David Thom, Marilynn Miller

Guests: Gary Davy, Tamara Vacanti, Kris Vurraro, Dave Kast, Brett Kast, James Kirby, Connie Mosher, Tibbs Alhberg, Jerry Culhane

Excused: Member: Curtis Strickland

Chairman Grabowski called the meeting to order at 7:00PM with the Pledge of Allegiance to the Flag.

**Approval of August 5, 2013 Minutes**

On a motion of Vice-Chairman Burke, seconded by Member Miller, the following was

Carried Ayes 5 Burke, Grabowski, Thom, Miller  
Nays 0

The August 5, 2013 minutes are approved as is.

**Approval of August 7, 2013 Minutes**

On a motion of Vice-Chairman Burke, seconded by Member Miller, the following was

Carried Ayes 5 Burke, Grabowski, Thom, Miller  
Nays 0

The August 7, 2013 minutes are approved as is.

**New Business**

**Opening of Public Hearing for Kast Farms Area Variance**

Chairman Grabowski read the public hearing notice at 7:02pm:

Town of Gaines Zoning Board of Appeals  
NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the Town of Gaines Zoning Board of Appeals will conduct a Public Hearing to review the application for area variances for Kast Farms Farm Labor Housing located at 2824 Densmore Road Albion, New York. The Public Hearing will be held on September 4<sup>th</sup>, 2013 at 7pm. at the Gaines Town Hall 14087 Ridge Road Albion, New York 14411. All persons attending will be heard for or against the application.

Dated August 19<sup>th</sup>, 2013

Carol L. Claus  
Secretary  
Zoning Board of Appeals

Chairman Grabowski stated when discussing the area variance we will be referring to the Town of Gaines Zoning Ordinance according to section 832. The five factors will be reviewed: Undesirable change in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance, whether the benefit sought by the applicant can be achieved by some feasible method other than a variance, whether the requested variance is substantial, whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, whether the alleged difficulty was self-created. Chairman Grabowski stated that area variances are granted to property not the applicant and they don't expire when the land changes hands and secondly, the ZBA will grant the minimal variance. The application being reviewed is for a foundation variance and an occupancy density variance.

Chris Verraro, attorney for Kast Farms opened with reviewing the occupancy density variance for code 665B that allows for maximum of 6 people occupancy in which they would like 8 and the use 665E requires full poured concrete foundation and they would like to use concrete piers. He gave an overview of the criteria's: Undesirable change within the neighborhood – located agricultural and surrounded by very few dwellings in close proximity. He also reviewed that the pier foundations have been used in mobile home parks in the area such as Heritage Estates and Oak Orchard, but was not aware of the codes at the time they were installed, it would not be an adverse change in the area to use these foundations. As far as being achieved by some other feasible method he says no, the applicant did a critical analysis of the number of farm laborers required and this is the most cost effective way. He needs to maintain safe, healthy, and comfortable conditions for all his farm workers. If they were to strictly adhere to the code they have an estimate from the contractor who was going to install them on a full slab foundation that is required by our code and to add two additional units to accommodate the density requirements, they are looking at an additional cost of \$190,000.00. He does not believe the foundation is a substantial deviation of the code as the pier foundation will maintain the permanent characteristic. Whether the occupancy variance is a substantial deviation from the code he stated the agency that places these farm laborers and the health department makes sure the living conditions are comfortable. They have maximized the number of units that they can have to fit these workers in comfortably and safely. The agency has approved it along with the health department. As far as adverse effect on the environment he believes the foundation they are proposing would have less effect on the environment, and as far as the occupancy goes the fewer the units the less impact on the environment. As far as being self created virtually all area variances are self created and that is the nature of them. He stated that is why the legislature with respect to area variances have carved out the fact that self creation is not an absolute bar to granting area variance.

Chairman Grabowski read a written statement submitted by Marc J. Vaillancourt.

Chairman Grabowski asked for discussion from the public and to keep comments to three minutes.

Tibbs Ahlberg stated that he wanted to remind the board that area variance don't have to go in front of the county for approval and can be handled in house. As far as pier foundations,

he has looked at NYS building code and it does allow for pier foundations and we should allow for that.

There were no more additional comments or questions. 7:21PM the Public Hearing was closed.

### **Board Discussion**

Member Thom requested a drawing of the specifics for the piers. Mr. Verraro did not have an elevation drawing. There have been no specifics of foundation design received. Mr. Kast has been requested to get details from the AGL and submit to the town. Mr. Kast believes they would follow the instructions that are in Roger Kopas installation manual. Mr. Verraro stated he believes the installer would follow the installation manual as well. Mr. Kast will request from AGL further information. Member Thom stated that Mr. Kast is requesting a variance from the code and would like to see exactly what it is they are changing. He believes there should be a drawing showing the details of what they are going to install. Mr. Kopas stated that they have been requesting the plans for the foundation since early July and is not sure why they have not helped Mr. Kast out with them. Chairman Grabowski stated the manufacturer has provided a cost difference for the two so he believes they must plans, he asked the town attorney if it would be unreasonable request to find out more information on the pier system. It has been noted that the board will permit Mr. Kast and his attorney to follow up with the requested information.

Vice-chairman Burke asked when these changes in zoning came in to play. He believes back in August of 2011 was when they were put in and two town board members (Dave and Jim) that were there tonight voted to put them in and now Dave wants a variance to change the ones he voted for. He stated it doesn't seem right to him. Mr. Verraro stated there is a difference between acting as a representative of a municipality and acting as an independent business owner dealing with a unique piece of real property. It is two different hats. Every circumstance is different. The fact that he is a town board member rather than a public servant should not work for or against him with respect to his application. Just as anyone on the ZBA it should not work for or against them. Vice-Chairman Burke stated he understood his point but he has a concern about that himself. That is how he feels.

Mr. Kirby stated it is odd he probably voted on it but it was Mr. DeCarlo who was the one who probably proposed the changes and he has a trailer park with trailers on pillars. He doesn't recall voting on it one way or the other.

Member Miller stated according to zoning law you are allowed 6 people in a single wide and 10 people in a double wide and the targeted figure for the number of workers was 32 so why they did not go with three double wides that would house 30 and not cause any of these issues. Mr. Verraro stated that it was mainly cost but they also need 32 workers and they would have been back here for a variance again for the other 2 workers.

On a Motion by member Thom, seconded by member Miller the following was carried

Carried            Ayes 5 Burke, Grabowski, Thom, Miller

Nays 0

To close the discussion and to reconvene at another time.

### **Old Business**

#### **Tamara Vacanti Site Plan Review/Special Use Permit**

Chairman Grabowski wanted to state for the record that this application was sent to the county planning board for review and comments and due to them cancelling the meeting pursuant to municipal law 239M if they cannot render a decision within 30 days of receipt of the application the town may take final action.

Tamara gave a brief overview of the special use permit. They would like to sell antiques, gently used articles, and items made from old things. Something for everyone.

Chairman Grabowski stated it was an existing business, building and site she is just changing the business purpose.

Tamara is planning on using the existing sign. There are lights in the sign but will on be on when it is dark and during hours of operation. They do not blink. The sign can not exceed 20 sq feet.

Member Miller asked about the handicapped ramp. Tamara stated that they rebuilt the one that had existed and it does meet code, but they are also going to build a new one in the front of the building to code. The ramp will go in the front door at the left facing the building.

Primary parking is in front and she believes it is ample but there is parking in back if needed.

There hours would not go past 6PM and she is thinking 5 days a week being open. Mon and Tues would be the closed days.

On a Motion by member Thom, seconded by Vice-Chairman Burke the following was carried

Carried           Ayes 5 Burke, Grabowski, Thom, Miller  
Nays 0

To accept the site plan application that has been provided.

On a Motion by Vice-Chairman Burke, seconded by member Miller the following was carried

Carried           Ayes 5 Burke, Grabowski, Thom, Miller  
Nays 0

To accept the Special Use Permit as presented

With no further business on a motion from Vice-Chairman Burke, seconded by Member Thom the meeting was recessed at 7:45pm.

Respectfully Submitted,  
Carol Claus