

**TOWN OF MAMAKATING
ZONING BOARD MEETING
FEBRUARY 25, 2016**

Meeting called to order at 7:00 p.m.

Roll call: Mathew Mordas, Chairman-Present; Board Members: Cathy Dawkins-Present, Georgia Rampe-Absent, Beverly Martin-Absent, Kent Findley-Present; Zoning Board Attorney: Steven Mogel – Present.

Application of John Stasko – Tax Map Section 29; Block 2; Lot 9

Present: Mr. Stasko

Chairman Mordas asked for Mr. Stasko to explain why he is here. Mr. Stasko stated in 1988 his father, his brother-in-law and he bought the property at 6 Short Road and intended to make the property what it is and as far as he knew it was always legal. In April 1st, 2007 he purchased the 1/3 share from his brother-in-law and it wasn't until his father passed in April that there was some hard feelings within the family and his brother-in-law was the one who then made the complaint to the Town that it was illegal. Counselor Mogel asked the property has been used since 1992 as a four family. Mr. Stasko responded "yes." Mr. Stasko stated there has never been an issue with the property until now.

C. Dawkins asked when they received the Building Permit for the property in 1992 how was it started. Mr. Stasko responded he was in his 20's at the time and he and his father did all the work with his brother-in-law "Longo" taking care of all the paperwork.

C. Dawkins asked "so you don't know"? Mr. Stasko responded well, since he bought the property, now he's seeing a lot of "flags" and it wasn't until he received this letter in September from the Building Department stating that it was illegal that he actually started going through all these papers and by reading all this, it leads him to believe the Town is right. He is hoping to get some kind of a variance to leave it as is.

C. Dawkins asked if all four apartments were rented and no one in the family lives there. Response by Mr. Stasko is that's correct.

Chairman Mordas asked Mr. Stasko when he bought out his brother-in-law if he asked him for a C.O. at the time. Mr. Stasko responded no because they were all family.

C. Dawkins stated after looking at what should have been built and what the septic was designed for is not what is there. Mr. Stasko responded that is true, but everything has been fine so far.

Someone asked when did the Code take affect and Chairman Mordas responded he believes it was before this was constructed and they actually had to go before the planning board for a special use permit to turn it into 3 office spaces as well as an apartment space.

Counselor Mogel asked Mr. Stasko if he had any of the paperwork where the concerned parties would of applied and been approved by the planning board for a special use permit

C. Dawkins asked if this was new construction at the time; response was this was an existing building which had been used by the Masten Lake Association.

Discussion took place about how the construction was done and when it was done since there was a signed site plan by the Planning Board; along with the Building Permit.

Counselor Mogel explained what would be required if the applicants had applied for a special use permit from the planning board.

Counselor Mogel explained to Mr. Stasko that what he is asking for is a "Use Variance" and the standards for obtaining this type of variance is very high because in essence what an applicant is asking is, they are asking the Zoning Board of Appeals to make an exception to what the Legislature, the Town Board has already determined often times based on expert advice as to what are appropriate uses in various parts of the town. So, the standards are very high and Use Variances are rarely granted. One of the things you will need to do and you will see it in your application you will have to demonstrate that the only way for you to get a reasonable return on this property is to obtain a variance and that you have to prove that by competent financial evidence. What it actually means is that you have to go through each and every use in the NR Residential District and you have to demonstrate by competent financial evidence that none of those uses would be appropriate for this property. That's something that could be done by appraisers, etc. but it has to be competent financial evidence. I just want you to know that this is a very high standard and there are other components to it but that is the thing that an applicant usually bangs there head against.

C. Dawkins stated this problem occurred from around 1992 and forward, but possibly some of the zoning changes that have just come into place or possible future ones and she doesn't know if this property sits on could be affected, but he should check this out with the Town Officials and if so, it could put you in a better position.

K. Findley expressed somewhat how he feels about the project stating the issues he sees he would be facing. He feels the only way to do this is with a zoning change; however, you do have the right to go forward with the public hearing if you see fit.

Mr. Stasko stated he was informed in the Building Department that he could have a legal two family. The Board responded that's fine but you still have to go through and obtain a special use permit from the planning board and there may be issues with the septic that will have to be addressed.

C. Dawkins stated she would be looking at something that would be useful, functional and within the law.

Counselor Mogel explained that a special use permit is an application that would be made to the planning board which would be accompanied by a site plan with a substantial filing fee because those plans need to be reviewed by the engineer. The fee schedule is on line or he can come into the office to obtain a copy. Counselor Mogel further stated that this could be a permissible use provided certain conditions are met by the planning board requirements such as traffic, septic, neighbors, etc. A four family is well beyond what is permitted in this district and what is permitted in this district is set forth in the code. Counselor Mogel suggested that would be a good place to start to see if the Town Board is considering a zoning change for the area this property is located in.

Mr. Stasko asked about trying at a public hearing. Counselor Mogel explained what the public hearing was. Since this application is for a Use Variance, SEQR will be required as well as 239 referrals.

C. Dawkins stated another option is to return the property to what it was originally approved for and then you wouldn't have to do anything.

Mr. Stasko responded he doesn't believe the property would survive that. He stated going the two family way might work but he was hoping to "sway" the Board to look at it the way it is.

Counselor Mogel asked Mr. Stasko if he was formally asking the Board to postpone the scheduling of the public hearing for next month. Mr. Stasko responded yes, he is has some decisions to make and will keep in touch with the Zone Board Office as to what he wants to do.

Application of Poplar Grove Cemetery Association – Tax Map Section 4; Block 1; Lot 48

Present: David Lybolt, President

Mr. Lybolt stated he was the President and Janet Lybolt was the Treasurer. Chairman Mordas stated before we go any further because of the shortage of members this evening he will be voting on potentially a public hearing for this application but he will recuse himself from the final decision and from discussion. (At this time Mr. Robert Justus delivered a sealed envelope to the Chairman and the secretary for the record and left.)

Mr. & Mrs. Lybolt stated “may we ask why”, was it anything to do with Mr. Justus walking in and handing you a piece of paper before this statement. Chairman Mordas responded “yes.” Mr. Lybolt stated you have no interest in the cemetery; Mrs. Lybolt stated “nor do we, we don’t own the cemetery.” We do this out of the goodness of our heart.

Chairman Mordas stated from the feedback from my fellow Board members he feels you will be treated in a favorable manner that is generally accorded to not for profit groups in this community and I wouldn’t be too concerned about “my” recusing from this conversation; he doesn’t think it will change the outcome.

Mrs. Lybolt wanted it put on the record that it upsets her that Mr. Justus is abusing this as a way to disgrace us, as a way to try and embarrass us, to try and disgrace us politically and he went on this witch hunt, he took Bob Fiore and Mary and said to Bob Fiore let’s go on a road trip which she further explained.

Mr. Lybolt stated by recusing yourself we also lose the wisdom of your knowledge and that hurts us. Chairman Mordas stated that in the letter from Mr. Justus he is being listed as “one of the sources that information may be obtained.” Does that give me permission to provide information at the public hearing before this Board? C. Dawkins stated “can I make a suggestion”, why doesn’t Chairman Mordas meet with legal counsel privately and discuss his relationship with the project and receive his advice. Counselor Mogel responded that he has no problem in speaking with the Chairman or anyone in this regard but let me just mention what “recusal” really means – recusal means that a person wants to avoid the appearance of any impropriety, it doesn’t mean that there is impropriety or that they can’t make a decision in an objective fashion but simply that they want to avoid that appearance of impropriety. He knows the Chairman has discussed this and this is a personal decision of his, he would make that determination as to whether he wants to recuse himself or not to recuse himself. He is the only one that can really make that determination.

Mrs. Lybolt spoke about when she was on the planning board and recusal; Counselor Mogel responded that he is not going to pass judgment about what another Chairman or board advises in that respect and again stated that recusal is a personal decision, it’s not a Board or legal decision. If the Chairman wants to speak further with me and also look through some relative case law, that’s fine.

Mr. Santadroit who spoke about having ancestors dating back to the 1890’s you couldn’t even find the cemetery and now it’s absolutely beautiful and thanks to these people and other volunteers as well as the money from the Sullivan Renaissance and we’re talking about a piece of paper for a shed and things like that and we are willing to do what needs to be done to take care of all that. However, what should have been done, it now looks beautiful you can bring your family there.

K. Findley stated he appreciated what was just said but these matters should be handled in a different way.

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Counselor Mogel responded that's something that would be appropriate in the public hearing but traditionally applicants will talk about the merits of their applications.

Mrs. Lybolt stated they were here for an area variance and an interpretation and the paperwork provided to the Board clearly states at least for the signs, with two pictures it a see thru, not a bill board, it's a small replica of the original sign that was put up back in the 1800's and they put it up to give the cemetery it's 911 address. In the past no one knew that was entrance. This cemetery has two entrances, the upper section and the back section and you cannot get to one section from the other. This has been updated on google maps. The 911 No. is now No. 180.

Mrs. Lybolt read zoning pertaining 199-99 –Section C - sign regulations – No. 8 - was read. They need an interpretation on this.

The other interpretation they need is in the back section of the cemetery is what they call the "teardrop" it's the back roadway. Mr. Lybolt wants to point out that Mary Grass, Building Inspector clearly that this is over an acre, if you go out and measure even if you go out and square out at the widest point the area that he physically went and measured, it still doesn't equal 43,560 sq. ft. so it is clearly under an acre of disturbance which according to State regulations does not require a SWPP or a SEQR, it's not over an acre and if the Building Inspector had measured it she wouldn't have violated us in the first place.

Mrs. Lybolt further stated in Section 150-5 Exemption, it's not a violation of the code, in exemption C, routine maintenance activity and exemption G, cemetery graves –this is a portion. The whole cemetery is only 7 acres and this portion of the cemetery seems to be raised at one point – plots and was supposed to be maintained on a regular basis which it was not and became overgrown. They left mature trees, oaks, cherry trees, it's fully seeded and grass is growing and they already have sold four grave sites. In the spring they are going to go out and map gravesites and each grave sold will help keep the cemetery maintained and it will not become a burden to the Town of Mamakating.

C. Dawkins asked if the "teardrop" area was contiguous with the rest of the cemetery and Mary was viewing the entire cemetery in one conglomerate; but these two are separated.

Mr. Lybolt responded it is contiguous but you have the upper section with one entrance and the lower section with another entrance. It is separated by a steep grade. They need the interpretation as to whether or not the teardrop area is under an acre and they are correct in what they did, now if they didn't, they are here trying to be compliant with Town Code as nothing was done under the table, behind anyone's back it was all well publicized.

Mrs. Lybolt stated the only problem they can see is with the shed. They bought a pre-engineered shed with the renaissance money and they bought approximately the same size as the original shed which was built back in 1913 but that shed is not that secure and they needed a shed in order to secure all the equipment in from being stolen.

Mr. Lybolt stated he may have been remiss in not trying to find out if there was a size limitation and he assumed since they had a shed there and this was roughly the same size that they were fine with the shed they purchased and again there was no construction; and if you try to find on line in our own code where it states a minimum or maximum square footage it's not there; they asked Mary and she informed them that it goes by State Code, but should be readily available for people to find out. Mr. Lybolt informed the Board approximately how much over the limit they are. So they will be asking the Board for an area variance to allow this shed.

K. Findley asked you received a violation for not having a Building Permit, correct for the shed; response was that's correct. K. Findley further asked then a violation was issued for storm water management; Mrs. Lybolt responded yes for routine maintenance of the area for the "teardrop" area.

K. Findley asked if the new sign was on a new road and response was no, both signs are on Phillip sport Rd., just a difference entrance; there's a north and south entrance.

Counselor Mogel stated for clarification purposes as he looks at the notice of violation from October 7th, 2015 and the first violation is Section 199, Subsection 61 Building Permits – no permit for the storage shed and that would fall under the zoning board of appeals of the appellate jurisdiction so the Board would hear that as an appeal of that violation but the applicant would also be requesting an area variance because they want to keep the shed there. The second offense code is Section 160 Subsection pertaining to Stormwater Management and Erosion and Sediment Control-the Zoning Board of Appeals doesn't have jurisdiction to interpret this code because the Zoning Board of Appeals is limited to interpreting only sections of the zoning code; however, once again the ZBA has appellate jurisdiction over any offense that or violation that has alleged by the Building Inspector so the ZBA would hear that based under its appellate jurisdiction and the Sign Violation under Section 199 Subsection 61 pertaining to Building Permits that would be an interpretation as the applicants have indicated that it falls within that exemption.

Motion made by C. Dawkins to schedule this applicant for a public hearing in March; second by K. Findley. All in favor.

Pine Lakes Development Corporation – Tax Map Section 12; Block 1; Lot 7 & 9 and **Amy Thomas** - Tax Map Section 12; Block 1; Lot 20 – Board Discussion:

Chairman Mordas stated they want interpretation of violations and or they are questioning the Building Inspectors violations. Chairman Mordas read aloud Code 199-58A (1) and this really factors into the fact that the applicant is not present.

Motion made by M. Mordas to schedule Pine Lakes Development Corporation and Amy Thomas for a public hearing on March 24, 2016 at 7:00 p.m. or as soon thereafter as the applications can be heard; second by K. Findley. All in favor. Notices will be sent to the adjoiners.

Motion made by K. Findley to close the meeting; second by C. Dawkins. All in favor.

Respectfully submitted,

Linda Franck,
Zoning Board Secretary