

TOWN OF GROTON ZONING BOARD OF APPEALS
Public Hearing/Meeting Minutes – Wednesday, 22 June 2016 – 7:30 PM
Groton Town Hall Court Room – 101 Conger Boulevard – Groton, NY

Board Members

Ted Schiele, Chairman
Officer
*Paul Fouts
Patricia Gaines
Carolann Darling
Daniel Cerretani

(*Absent)

Others Present

Rick Fritz, Code Enforcement

Don Scheffler, Town Supervisor
Victoria Monty, Town Attorney
April Scheffler, Town Clerk
Randy Jackson, Town Councilman
Robin Cargian, Deputy Clerk

Applicants & Public in Attendance

Erich & Mary Sue Haesche, Appellants; Attorney John A. DelVecchio; Leah, Jeremiah & Levi Haesche, Marian & George Haesche, Joan & Peter King, Bob & Sharon Fouts

Erich & Mary Sue Haesche, Appellants/Reputed Owners – 93 & 97 Ogden Road – TM #s 28.-1-34.304 – Continuation of Use Variance – Warehouse Facility in M2 District

(It is noted for the record that the Public Hearing for this appeal was held on 1 July 2016, with the final action made to recess the Public Hearing for a Use Variance to maintain a warehouse facility in an M2 District until 7:30 p.m. on 22 June 2016.)

Chairman Ted Schiele reconvened the Public Hearing at 7:30 p.m. by reading aloud a portion of the Legal Notice for the 1 June 2016 meeting. Those ZBA members present introduced themselves.

Chairman Schiele announced that the reason the Public Hearing was recessed was to allow additional statements from the Haesche’s attorney, John DelVecchio, and also the Haesches. Those statements were received by this Board within the timetable set forth at the 1 June 2016 Hearing.

Chairman Schiele then asked if there were any public comments and stated any comments would be limited to three minutes; they were received as follows:

Joan King - 89 Ogden Road – Erich previously commented water only goes to their side, but in 2004-2005, Sue Haesche put bleach in her well to shock it and it wound up affecting the King’s well and also gave a “distaste in well number 34 which is a quarter of a mile away down the hill on the other side ... drive.” Wanted to make sure this got on the record. Has photos of vehicle parked on her front lawn waiting for another vehicle to back up into the Haesche’s driveway.

Erich Haesche, Appellant – Since 1973, 93 Ogden Road has been a warehouse and continues to be so. Was built as such for father’s carpentry business. Started to use 93 & 97 as a warehouse for Lubricants & Fuel Solutions in 2010, and 105 Ogden Road had previously (late 1980s) been used as a warehouse for energy drinks by someone else.

Chairman Schiele then commented that there had been a question asked at the last meeting about the previous zoning change and its history. Town Clerk April Scheffler had researched this and gave an overview of what had transpired previously (2008-11) in this location. Town Board felt that this was an area that needed to be protected. Member Dan Cerretani clarified, “Since this was residential, you wanted it to be made so that it would be not appropriate for businesses to be there because they may bring in non-residential sorts of things?” Town Clerk Scheffler responded in the affirmative, “Yes, and mostly because they were such small lots and everything was so close together.”

Chairman Schiele also commented that the way the M2 district was written, it was also “tightened up.”

In response to Member Darling’s question, Town Clerk Scheffler stated that the Town Code is currently undergoing a thorough review.

The definition of “warehouse” was mentioned, but this would be taken up in the discussion portion of this hearing/meeting.

Chairman Schiele then stated it was important to understand the Certificate of Completion that had been issued to the Appellant in mid-January, followed by a Notice of Violation in early May by the Zoning Office. He asked current CEO Rick Fritz to explain what this signified for this project. CEO Fritz explained the process from issuance of a Building Permit to a Certificate of Completion/Occupancy in order to assure conformance with the State Building Codes. In this case, he stated, “it was a cold storage permit. I went out to close the permit. I came in at the end of it. So I went out for a structural inspection that the electric and building were built to NYS Codes. So to close that structure and give them compliance, we needed to send them a Certificate of Compliance that the building was built to NYS Codes and it’s safe and ready to go. The violation, later on in May, is when we get a report on somebody that’s kind of breaking the law or an ordinance or whatever, that’s totally something different. Then what I do is I go out and I inspect that site and if they aren’t to our codes and to our local ordinance, then a violation gets issued.”

Chairman Schiele asked if anywhere in the process it is indicated what the building will be used for. CEO Fritz responded, “None whatsoever.” Use occupancy was “storage,” just like for a shed or a garage. Chairman Schiele then circulated a copy of the Inspection Report by CEO Fritz, dated 1/14/16, which indicated a use and occupancy as “Business.”

With all those wishing to be heard having been heard, and on a motion by Member Gaines, seconded by Member Darling, with all those members present voting in favor, Chairman Schiele closed the Public Hearing at 8:08 p.m.

BOARD DISCUSSION/DECISION

Chairman Schiele then asked for questions from the Board members, starting with the definition of warehouse which did not seem to be defined in the Code Book anywhere. Since there is no definition, Chairman Schiele stated, it is not something that the ZBA could not take into account in their decision. Town Attorney Victoria Monty responded that they could consider it the “commonly understood definition of warehouse.” They then looked at the chart appearing on page 62. Chairman Schiele commented that “storage” is storage, and “warehouse” is just re-storage and distribution. This should be made clearer in the future. For the purposes of this matter, the Board agreed to use storage and distribution as a definition for a warehouse.

Member Cerretani then asked what the process was for changing the Land Use classification of an area; this was explained by Attorney Monty. This Board could make a recommendation to the Town Board, the Board responsible for making such changes. Board members were in favor of doing so.

It is noted that Attorney Monty advised this Board that they had 62 days from the close of the Public Hearing to render a decision regarding this use variance request. The appellant could, however, agree to an extension of time.

Chairman Schiele then noted that one of the items in the Haesche packet, placed there by the previous Code Enforcement Officer, was a note dated 9/17/12 which stated “He’s not running any retail business . . . and he only keeps an office in home. I will do nothing until I get a complaint.” Chairman Schiele felt “we’re all burdened by the impact of these actions of the

previous Code Enforcement Officer.” He asked the Board members how they wanted to address this, or did they want to just wait until they did the “balancing test”?

Member Gaines stated that it seemed to her that if any resident goes to the Town CEO and lays out their plans, and the CEO okays every change along the way, then it’s not fair to get slapped down later for things that the CEO should have told them. It shouldn’t have happened. Member Darling stated she echoed Member Gaines’ remarks and was “mortified” that this has occurred. She considered it a great disservice to the property owner that they were not properly directed in what steps to take so they could make their livelihood. Member Cerretani affirmed his agreement with both Member Gaines’ and Member Darling’s opinions. He stated that he felt it was unfortunate that there was misinformation provided, and it is quite clear that “that sort of an operation is not allowed in that type of a zone.” Chairman Schiele also agreed with what had been said, and he felt “mortified” was a good word.

Chairman Schiele asked to what degree this is the appellant’s responsibility as there was no Site Plan Review conducted which is called for in the Code in 2010. This will also have to be considered. Member Gaines commented that, “In a perfect world, everybody would know all the things that they’re supposed to know for anything that they’re going to do.” But it still seemed to her that if a resident goes to the person in charge of this and ask all those questions, they should get all those answers. Member Cerretani asked if there was a way to address the Board’s concerns without closing down his business; there should be some middle ground that would both satisfy the neighbors with legitimate concerns, but also not close down a business at the same time. Attorney Monty advised that this Board can impose any reasonable conditions that they feel would protect the health, welfare, and safety of the neighborhood.

Chairman Schiele then acknowledge a letter in the subject file from the McLean Fire Department’s Chief that said that in case of a fire he would add more mutual aid to the response plan at the address, and that when the fire was extinguished he would have to notify the NYSDEC and turn the fire scene over to them because of the oil and other products inside the building. That, to Chairman Schiele, was a concern. Also, there’s the question of to what extent is a reasonable condition regardless of what’s stored in the warehouse, because it is a warehouse. But, he stated, the law states there cannot be a warehouse there.

Attorney Monty commented that this is the reason for the appeal is because a warehouse is not permitted in the district. The Board could determine to grant the use variance subject to, for example, Site Plan Review by the Town Planning Board; this is where all the concerns/factors would be addressed.

ZBA members discussed continuing their discussion and conducting the required Balancing Test at a future date, but within the required 62-day time limit.

At the close of this lengthy discussion, **a motion was made by Member Gaines to continue the discussion on 14 July 2016 at 7:30 p.m. for the requested Use Variance to maintain a warehouse facility in an M2 District. The motion was seconded by Member Darling, with the vote recorded as follows:**

Ayes:	Chairman Schiele	Nays:	None
	Member Cerretani		
	Member Darling		
	Member Gaines	Absent:	Member Fouts

Motion carried.

This becomes Action #6 of 2016.

APPROVAL OF MINUTES – 1 JUNE 2016

A motion was made by Member Cerretani to approve the Minutes of the 1 June 2016 ZBA meeting, as submitted. The motion was seconded by Member Gaines, with the vote recorded as follows:

Ayes:	Chairman Schiele	Nays:	None
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Member Cerretani

Member Darling

Member Gaines

Absent: Member Fouts

Motion carried.

This becomes Action #7 of 2016.

ADJOURNMENT

At 8:45 p.m., a motion was made by Member Darling to adjourn the meeting. The motion was seconded by Member Cerretani, with all members present voting in favor.


Joan E. Fitch, Board Secretary

Emailed to Supv., Town/Deputy Clerks, CEO Fritz,
Attorney Monty & Board Members on 7/26/16.