

APPROVED

JOINT TOWN/VILLAGE OF CLAYTON

ZONING BOARD OF APPEALS

JULY 20, 2020

The meeting was called to order by Chairman Jim Kenney at 7:04 p.m. with the following **members present**: Jim Kenney, Dale Maclaughlin, Steve Mack, Lori Arnot, alternate Chip Garnsey, alternate Andrew Wood. Member Ashley Pastorius was absent. Chip Garnsey will sit in for Ashley Pastorius.

Also Present: Zoning Officer Richard Ingerson, Recording Clerk Susan Kenney

Townspople Present: Ratherty (?) Taylor, Joe Chrisman, Jack Kellogg, Jennifer VanReenen, Jakob VanReenen, Taylor Kellogg, Rich Clarke, Patricia Bach, Stan Bach Jr., Melanie Freeman, M.T. Gervis, William Glass, Glenn Morey, Tom Gillette, Janis Matthew, Phil Flora, Candy Duswalt, Jim Duswalt, Gib Street, David Males (?), Ben Parker, Patsy Parker, Sarah Cleaver, Matt Cleaver, Rich Fox, Kath Fox, Christy Hunter, Jeffrey Messenger, Barb Keil

Chairman Kenney began by explaining the protocols that would be in place for this meeting, due to the threat of the coronavirus.

7:06 p.m. – John Wooley – Area variance for lot line adjustment to a property line on a non-conforming lot.

No one was at the meeting to present for Mr. Wooley, but a neighbor, Glenn Morey, was present to say that he and the rest of the neighbors had no problem with the proposed lot line adjustment. ZEO Ingerson explained that the two adjoining lots were owned by one person, but he wished to sell one lot, and wanted to make the adjustment to provide parking space for each lot. The line would move 14 ½ feet at each end, but there would be no change in the square footage of either lot. The lots are not directly on a road, so there is no issue with road frontage; they are both on the River, and each one has plenty of river frontage.

At 7:11 p.m., **MOTION** was made by Dale Maclaughlin, second by Chip Garnsey (sitting in for Ashley Pastorius), to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Dale Maclaughlin, second by Steve Mack, to close the public hearing. Motion was passed with all in favor.

Chairman Jim Kenney did the finding of fact. At 7:18 p.m., **MOTION** was made by Dale Maclaughlin, second by Lori Arnot, to approve the application as submitted.

Aye: Kenney, Maclaughlin, Mack, Arnot, Garnsey (acting for Pastorius)

Nay: none

Abstain: none

Absent: Pastorius

7:22 p.m. – Jakob VanReenen – variance application for interpretation of the law in the Marine Development district

The applicants wish to appeal a decision by ZEO Ingerson that part of the VanReenens' business fit the description of a small manufacturing operation, which is not allowed in the Marine Development (MD) district. Jennifer VanReenen did the presenting. She read a prepared statement, beginning with the question: is building docks a water-dependent usage? Part of the purpose of the MD district is to provide for water-related activities. Further, the code demands that activities be in compliance with the LWRP (Local Waterfront Revitalization Program). A water-dependent usage is defined as a business or other activity which can only be done in or on the water. Ms. VanReenen declared that a dock is a structure extending over the water for mooring of boats, so that is certainly a water-dependent usage. The VanReenen's business, Seaway Marine Group, LLC, provides services to several people and businesses in the village, the town, and the state, including emergency water transportation for National Grid. Their work allows people of Clayton to enjoy the waterfront, and draws several people and businesses to the area. The LWRP states that water-dependent uses should be protected and promoted over other uses of property in the area covered by the LWRP.

Ms. VanReenen's second point was that, despite neighbors' claims to the contrary, the business does have direct access to the water, through a private lot. They are not detracting from public access to the water because this is their own property, and it has never been public before. The business had been purchased from Kellogg's, and the VanReenens are performing the same uses as the previous owner. Ms. VanReenen added that she and her husband pay village property taxes and other state and local taxes, and they cover all the expenses for the property and business. They also donate heavily to local charities. Therefore their presence and the presence of their business is an asset to the community.

Ms. VanReenen also noted that if the neighbors did not like the noise generated by a business requiring deliveries and other noise-producing activities, they should not have purchased property next to a commercial district. The VanReenens' business is not a welding shop, nor a machine shop. They have built only nine docks in their facility in the past four years. They are allowed to repair and maintain their own machinery on-site, so the noise level would not change if building docks at that site was prohibited.

Members of the board clarified the main focus of this hearing. The hearing needed to determine if the building of a small number of docks in the facility would be classified as a small manufacturing operation. How does the village ordinance define small manufacturing operations? It was pointed out that this issue needs to be looked at in depth regarding the LWRP, but this hearing was not concerned with granting a variance, but rather with interpreting a definition. The current ordinance does not line up perfectly with the LWRP, so the village board needs to look at the ordinance to bring existing laws into compliance with the LWRP. The board is constrained to look at the issue in light of the current ordinance.

Chairman Kenney read a letter from the Jefferson County Planning Board. The issue is deemed to have no county-wide significance. A waterfront assessment needs to be done. Part 2, section 132 of the Village of Clayton code defines a small manufacturing operation, and the Van Reenens' business of building docks in their facility meets that definition. The ZBA needs to make sure the current usage complies with the site plan.

Several persons present made comments on the appeal. For the appeal:

- Building the docks is only ancillary, not the main activity of the business.
- The docks are not built unless a customer requests it.

- This has been used as a marine commercial area for over 100 years, long before village zoning. Clayton is a river town.
- The VanReenens are working hard to make a living; if the words of the law are wrong, they should not dictate actions.
- We all need to be more kind and communicate with each other.
- People and businesses which do work on the islands depend on barges, which are a large part of the VanReenens' business; if the VanReenens are stopped from doing business, where will it all stop?
- Other businesses, such as marinas which have boats shipped to them, have to do some assembly after delivery. Will those businesses be stopped as well?
- For many years Frinks ran three shifts and made plenty of noise, but was tolerated and respected by its neighbors.
- The VanReenens employ several people, including some disabled vets; if their business is shut down, these employees will not be able to pay bills, and it will be disrespectful to those disabled vets who have fought so hard for this country.
- Some of the boat traffic is to aid people who live on islands and need to get to the mainland at a very early hour to get to work.
- The VanReenens are doing their best to comply. If this is only about hours of operation, which is outside of the ZBA's purview, this hearing should not be taking place at all.
- This cease-and-desist order is being too picky. The attention should not be focused on one very small part of a much larger process.
- This hearing is of no use since if the appeal is denied, the VanReenens will simply keep going in the process, and nothing said tonight will make any difference.
- The business is already allowed to do repair and maintenance on their boats and equipment, per the site plan. The materials and equipment used for that is the same as for building docks, so even if docks are forbidden, the noise level and disturbance will not change.

Against the appeal:

- The phrase "water-dependent" does not appear in the code.
- Not all water-dependent activities are allowed in the MD district.
- Even excluding the dock buildings, the other activities at the VanReenens' business need to be looked at to ensure they all fall under allowed uses.
- A nonconforming use of record is not necessarily grandfathered in. There has been little or no cooperation from the VanReenens when neighbors have complained.
- If the VanReenens are currently building 10 docks in 4 years, where will that end? At 10 docks in 1 year? At 10 docks in a month?
- The LWRP was put in place to help protect the residents, not just the businesses.
- The repair and maintenance of boats and equipment may not be allowed in the MD district even if it was included in the site plan.

Chairman Kenney read several other letters and emails that had been received concerning this appeal. Many of them referred to an issue with the hours of operation, which is not within the purview of the ZBA.

Chairman Kenney also emphasized that the ZBA cannot negate the ordinance, it can only interpret. He also

noted that if an allowed nonconforming use had stopped before the VanReenens took over, that nonconforming use is no longer allowed.

At 8:51 p.m., **MOTION** was made by Chip Garnsey (sitting in for Ashley Pastorius), second by Lori to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact on a different form than usual, because this hearing is for an interpretation, not a variance. Reasons will be listed why this appeal should be granted, then reasons listed why the appeal should be denied. There was some discussion among the board members. All agreed that the board should recommend to the village and town boards to bring the zoning ordinances into compliance with the LWRP and the comprehensive plan as soon as possible, and to do a review of the VanReenens' original site plan.

At 9:10 p.m., a roll call vote was made:

Approve the appeal: Arnot Abstain: none Absent: Pastorius

Deny the appeal: Kenney, Maclaughlin, Mack, Garnsey (sitting in for Pastorius)

It was emphasized to the audience that the board was constrained by the ordinance as written. Along with the ZBA, they need to address the village and town boards with their concerns about this matter.

9:15 p.m. – Jeffrey Messenger – area variance to sub-divide and create three lots that have smaller frontage than zoning ordinance allows

Mr. Messenger presented for the application. He had come for a pre-application hearing in February of this year, but since then has made some changes to his original plan. He is asking for some substantial variances in both road frontage and area for the lots. There is a 100-foot right-of-way, but that cannot be considered as part of the property. Mr. Messenger stated that Lot 1 would have 16 acres of area; Lot 2 would have 30,000 ft², which could be increased to 40,000 ft² if necessary; and Lot 3 would have 24 acres.

At 9:26 p.m., **MOTION** was made by Dale Maclaughlin, second by Lori Arnot, to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Steve Mack, second by Chip Garnsey (acting for Ashley Pastorius), to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact. At 9:35 p.m., **MOTION** was made by Lori Arnot, second by Steve Mack, to approve the application as submitted.

Aye: Kenney, Maclaughlin, Mack, Arnot, Garnsey (acting for Pastorius)

Nay: none Abstain: none Absent: Pastorius

9:38 p.m. – Donald Luicana – area variance to locate a storage building closer to a side property line than is allowed in that district

Mr. Luicana presented the application. He is asking for a 5-foot setback for a 14x32 storage garage on a very narrow lot. Some of the neighbors have made inquiries about the project and have expressed no problems with it. The building will come from North Country Storage Barns and will be only 12 feet at the peak. This

will replace an existing building that is much smaller and will not be as close to the lot line as the existing building.

At 9:41 p.m., **MOTION** was made by Chip Garnsey (sitting in for Ashley Pastorius), second by Steve Mack, to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Steve Mack, second by Chip Garnsey (sitting in for Ashley Pastorius), to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact. At 9:47 p.m., **MOTION** was made by Dale Maclaughlin, second by Chip Garnsey (sitting in for Ashley Pastorius), to approve the application as submitted.

Aye: Kenney, Maclaughlin, Mack, Arnot, Garnsey (acting for Pastorius)

Nay: none

Abstain: none

Absent: Pastorius

9:50 p.m. – Jeffrey Senecal – Area variance to erect a private garage closer to a property line than is allowed in that district.

Mr. Senecal wishes to erect a garage five feet from the property line. No one was at the meeting to present the application, but a neighbor, Barb Keil, was present to express her concerns. She had also sent in a letter, which was read by Chairman Kenney. Mr Senecal had previously erected a fence on the driveway that is shared by the two properties, but Ms. Keil is concerned that, since some of the lot line markers are missing, the fence is partly on her property. She is having a survey done to verify where the lot lines are. She has no objection to the garage, she just wants to be sure that it is on Mr. Senecal's property and not hers.

At 9:55 p.m., **MOTION** was made by Chip Garnsey (acting for Ashley Pastorius), second by Steve Mack, to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Lori Arnot, second by Chip Garnsey (acting for Ashley Pastorius), to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact. At 9:59 p.m., **MOTION** was made by Dale Maclaughlin, second by Lori Arnot, to approve the application with the condition that there will be no construction until the survey is completed.

Aye: Kenney, Maclaughlin, Mack, Arnot, Garnsey (acting for Pastorius)

Nay: none

Abstain: none

Absent: Pastorius

NEW BUSINESS

At 10:00 p.m., ZEO Ingerson briefly apprised the board members of an upcoming application from a property owner who wishes to subdivide property on Rte. 180.

OLD BUSINESS

At 10:02 p.m., **MOTION** was made by Chip Garnsey (acting for Ashley Pastorius), second by Lori Arnot, to accept the February meeting minutes as submitted. Motion was passed with all in favor.

At 10:03 p.m., **MOTION** was made by Chip Garnsey (acting for Ashley Pastorius), second by Steve Mack, to adjourn the meeting. Motion was passed with all in favor.

Respectfully submitted,

Susan Kenney, Recording Clerk