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ZONING BOARD OF APPEALS

TOWN HOUSE
ANNEX
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Town of Somers

WESTCHESTER COUNTY, N.Y.



Meeting Minutes
October 16, 2018

The members present were: Chairman Cannistra, Mr. Carpaneto, Ms. D'Ippolito, Mr. Guyot, Mr. Harden, Mr. Newman and Mr. Santaroni.

Building Inspector Tom Tooma and interested residents were also present.

Chairman Cannistra opened the meeting at 7:30 p.m. with the Pledge of Allegiance.

APPLICANTS

Chairman Cannistra announced that the application for Carol Miller, item number 2 on the agenda has been adjourned until the November 20, 2018 meeting at the request of the applicant. In addition, the application for Anthony and Catherine Porco, item number 4 on the agenda has also been adjourned until the November meeting. Since the decision of the NY Supreme Court was just received last week, delaying the hearing will give everyone ample time to prepare themselves since the Stay was issued.

WILDERNESS CROSSING, LLC – BZ22/18 – 17.15-1-15.12

An application for an Area Variance for signs which exceed the maximum height, as well as an Area Variance for more than the number of signs allowed for a retail business, located in an MFR-D District at 266 Route 202, Somers. The property is shown on the Town Tax Map as Section: 17.15, Block: 1, Lot: 15.12. RE: Section Schedule 170-126.

Lou DiLeo of Studio Rai Architects addressed the Board. At the Architectural Review Board meeting on September 27, 2018 owners of DeCicco & Sons Chris and John DeCicco proposed their standard signage package for their new business. Five signs are being proposed for the building, and one free standing sign located at the Route 202 entrance.

The three building signs are identical to each other and will be placed on the front, back and side (facing the Towne Centre at Somers) of the building that will read “DeCicco & Sons” in white pin letters and the “&” is placed inside a shopping bag that is olive green. The height of the signs is 23.96”, but the shopping bag in the middle is 35.14” and the length is 226.72”. Two additional signs that read “DeCicco” in black letters will be installed above the clock in the clock tower, one facing Route 202, the other facing the rear. A free-standing sign located at the Route 202 entrance reads “DeCicco & Sons” in black letters on a light grey background.

A memo in support of the application was received by the Architectural Review Board. Although they did not object to the design and colors of the signs proposed, they couldn’t be approved as the DeCicco & Sons signs are 11.14” higher in the center where the shopping bag part of their logo is. In addition, the applicant is only permitted to have two signs as per the Code and the proposal is for a total of six.

Mr. Guyot thought that there were too many signs and it would be a distraction. Mr. Cannistra felt that since the building is so large, it could handle the additional signs being proposed.

Mr. Guyot made a motion for a Type II action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

| | |
|--------------------|-----|
| Mr. Carpaneto | Aye |
| Ms. D’Ippolito | Aye |
| Mr. Guyot | Aye |
| Mr. Harden | Aye |
| Mr. Newman | Aye |
| Mr. Santaroni | Aye |
| Chairman Cannistra | Aye |

Mr. Carpaneto made a motion to grant the height variance, as well as a variance for four additional signs. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

| | |
|----------------|-----|
| Mr. Carpaneto | Aye |
| Ms. D’Ippolito | Aye |
| Mr. Guyot | Nay |
| Mr. Harden | Aye |
| Mr. Newman | Aye |
| Mr. Santaroni | Aye |

The Area Variances were approved.

KAELA CHOQUETTE AND DAVID POTTER – BZ24/18 – 28.06-1-5

An application for a Special Exception Use Permit to construct an accessory apartment on the 2nd floor of a barn, as well as an Area Variance because the barn is being constructed after April 1, 1992, located in an R-80 Residential District at 6 Annarock Drive, Somers. The property is shown on the Town Tax Map as Section: 28.06, Block: 1, Lot: 5. RE: Section Schedule 170-70.

New owner of 6 Annarock Drive Kaela Choquette addressed the Board. She would like permission to put an accessory apartment on the 2nd floor of a barn that is yet to be built. Her mother would live in the apartment and the barn cannot be seen from the road. Her grandfather is the co-owner of the property and will live in the main house. Ms. Choquette knows of many apartments in the immediate area that are above barns. She lived in one for about 4 ½ years while her horses were housed in the barn below the apartment. She has received Westchester County Board of Health approval for the accessory apartment. The property is just under 9 acres. Ms. Choquette is a veterinary physician who travels to people's homes and barns. She also spends time doing surgery on horses at a local vet's office. At the request of the Chairman, she would be willing to a condition of only family members and workers living in the accessory apartment, as well as not accepting rent.

Michael Caruso, attorney for Barlow and Patricia Humphreys, as well as George Azar addressed the Board. His Opposition Memorandum of Law, which was delivered this afternoon was reviewed and discussed. He was reminded that in the future documentations for the Board must be submitted to the Secretary no later than 10 days prior to the meeting. Mr. Caruso argued the following points: The Zoning Board lacks jurisdiction to decide the application; the application seeks prohibited mixed uses; a Use Variance is more appropriate than an Area Variance in considering relief from Code §170-70(B); and the applicants cannot meet the legal standard for a special exception use. Pictures were shared as well.

Mr. Newman stated the points made were not related to the specifics of the application.

Chairman Cannistra reminded Mr. Caruso that the Building Department would have sent the applicant to the Planning Board if necessary and the Zoning Board of Appeals does have jurisdiction of the Special Exception Use Permit being requested. With regard to the Code stating that "No building used for human habitation shall be used to house domestic animals", if it were taken literally than no homes in the Town of Somers could have dogs or cats. He is also aware of numerous barns that have an apartment on the 2nd floor.

Town Attorney Gerry Reilly said the application is a permitted use in this District and an Area Variance can be given. In addition, it is the obligation of the Zoning Board of Appeals to interpret the Code liberally.

Tim Allen of Bibbo Associates addressed the Board. He is representing the applicant and it is not a Planning Board issue. The barn has been signed off by the Planning and Engineering Department and there are no environmental concerns.

Mr. Guyot asked what arrangements have been made if any in case the septic fails. Mr. Allen said there is room to expand the existing septic and a new septic system will be added to accommodate the accessory apartment.

George Azar of 265 Route 100 addressed the Board with a topography map model that he made. Although he is not a professional, Mr. Azar is concerned about the punchbowl effect that exists on his property and it being made worse by run off from the paddock for the horses.

Chairman Cannistra reminded everyone that being allowed to build the barn is as of right.

Larry Fable of 19 Annarock Drive addressed the Board. He built his house in 1975 and wants the area to remain residential, not business. The Chairman responded that running a business is not allowed and if done a violation would be issued.

Barlow Humphreys of 4 Annarock Drive addressed the Board. He noted that it was interesting to hear what can and can't be spoken about throughout the meeting. In his opinion uses proposed for the property will result in a hazard to human health. Having an apartment above a horse stable will lead directly to upper respiratory infection disease. In addition, he feels that as it is a scientific fact that there are no less than ten easily communicable diseases the can pass from horses directly to human. Mr. Humphreys went on to say that over half the residents in the neighborhood are retired and if the application is approved it will result in a loss of home equity, decrease property values, destruct their neighborhood and will not allow them to age in place. He is also concerned about the steep slopes that have run off with high velocity.

Chairman Cannistra reminded everyone that the Zoning Board of Appeals cannot change the code and have to consider anything that is applicable to the accessory apartment. Mr. Humphreys replied by saying the Code is out of date.

Dominic Veltri of 3 Annarock Drive addressed the Board. He sent a letter to the Board and referenced Code Section 170-70 (b) that says an accessory apartment cannot be placed in a structure built after April 1, 1992. Chairman Cannistra reminded him that the Building Permit to construct the barn has not yet been issued, however the precedence has been set to allow accessory apartments in structures built after that date. Mr. Veltri went on to talk about Section 170-70 (h) which addresses water supply and sewage for accessory apartments. Mr. Allen responded that the applicant has received

Westchester County Department of Health approval for the accessory apartment and they are also putting in a new septic system for it. In his opinion, Mr. Veltri thinks allowing the apartment goes against Section 170-70 (o) and also talked about Section 170-106, standards for determination. In his opinion a logical step has been missed. The apartment will have an adverse impact on his neighborhood and there are environmental impacts despite what the Planning and Engineering Department has said. Mr. Veltri respectfully disagrees with Town Attorney Reilly with regard to Section 170-69-B as in his opinion it doesn't mean that people can't live with cats and dogs. He also doesn't believe it is a Type II Action.

Mr. Caruso feels that the applicant should have gotten a waiver of site plan approval by the Planning Board since it is required in Code Section 170-60.

Mr. Reilly said the Building Inspector allowed the Zoning Board to look at the application which is defined as a Type II Action. In addition, the Board cannot address something that is not before it.

Chairman Cannistra stated that in all the years he has been on the Zoning Board of Appeals, a site plan approval has never been required for a Special Exception Use Permit for an accessory apartment. Mr. Allen agrees.

Steve Miller of 22 Annarock Drive addressed the Board. He has been a resident for 25 years and feels that if the application is approved it will significantly change the neighborhood and they should be required to go to the Planning Board for approval. Mr. Miller urged the Board to walk the site and the neighborhood to see the true character of what is there. Chairman Cannistra responded that only the Building Inspector can send an applicant to the Planning Board.

Mr. Guyot reminded the audience that some of the houses in the neighborhood are in a flood zone, which has already decreased the value of the property.

Jane Fusco of 1 Annarock Drive addressed the Board and asked that they please consider all that they heard this evening and read all the Codes referenced.

Karen Wagner of 8 Wellington Lane addressed the Board and reference Code Section 170-110-A. She would like a written determination about the plans from the former Building Inspector. Chairman Cannistra stated that he doesn't have to justify his decisions in writing and it is also not practical or reasonable to do so. If someone disagrees with a decision made they can file an application to the Zoning Board. The Building Inspector only had to refer out the Special Exception Use Permit for the accessory apartment. Town Attorney Reilly stated that public notices don't have to be sent to neighbors when a Building Permit is issued. If someone finds something wrong they can file an application with the Zoning Board.

Co-owner of 6 Annarock Drive Dave Potter addressed the Board. He and his granddaughter plan to put about a half million dollars of improvements to the house and

property which will increase the value of his property in excess of \$400,000 so he is not sure why folks are concerned about the value of their property going down. With regard to the health issues, Westchester County has the largest population of horses in the country and if someone gets sick from a horse they are keeping the barn closed up and shut which is not the right thing to do. The windows need to be open so air can circulate. Diseases related to horses happen in Europe, South American and Australia, not the United States. There has only been one incident recorded were someone got hepatitis from a rat and that was in Hong Kong. Mr. Potter and his granddaughter Ms. Choquette consult people on managing barns and would never allow their barn to be anything but pristine. He encouraged the audience to go visit Heritage Farm in Somers, one could eat off their floors and that is how their barn will be. Manure management is a science and 75 to 80% is in the stalls, not in the paddocks. Regardless of wherever it is it gets picked up every day, stored in steel containers and removed from the property every other week. 75 to 80% of the meadows are covered with grass all year long and they rotate the horses so it doesn't get muddy. The barn and the apartment will not change the topography or create swales, slopes or drainage issues. Most of the concerns expressed this evening included inaccurate information. They have four horses that are retired and are not able to be ridden. The horses basically poop and eat, they are old, don't wake up easily and certainly don't wander all night and make noise. Dogs are noisier than horses. Large trucks and trailers will not be commuting to their property. Box trucks will deliver their hay and remove the manure. Mr. Potter told the Board that he is selling his house in New Hampshire which is within walking distance of four horse barns and his real estate agent said to include that information in the listing as it is an enticement to a buyer.

Kathie Pacella of 10 Highview Terrace addressed the Board. She lived in the Bronx Zoo for 20 years and that had an acre for 1 horse. In her opinion it is unhealthy for the applicant to have 4 horses and they don't have enough property for that many horses.

Barlow Humphreys of 4 Annarock Drive addressed the Board. Manure management has proven to be a serious issue.

Mr. Guyot asked Mr. Potter what he does for a living. Mr. Potter responded that he is retired, but was an executive at Xerox for 35 years.

Tom Bistany of 10 Annarock Drive addressed the Board. He has lived in his house for two years. In his opinion he thinks it is the applicant's intention to run a business and the accessory apartment will accompany that business. Mr. Bistany also thinks the character of the neighborhood will change.

Applicant Ms. Choquette addressed the Board. She wanted the Board to know that there is currently an accessory apartment on Annarock Drive. She will not be running a business from the property and the only visible change will be the fenced in front yard. There will not be a riding ring. They bought the property to be there forever home and did a substantial amount of research with the Town before purchasing it. They were always up front about their plans. The house had been abandoned for 13 years and

broken in to. She thought that the neighbors would welcome them into the neighborhood and be happy with what they planned to do. Clearly that is not the case.

Patricia Humphreys of 4 Annarock Drive addressed the Board. In her opinion, the plans for this property will jeopardize their investment and lifestyle. It is not a horse area and was originally a gravel pit. She doesn't believe people should live above a barn. It is a poor way of living, as well as mentally and physically unhealthy. Mrs. Humphreys went on to say that it is not a valid or feasible place for anyone to live. Code Section 170-69-2 says that no building used for human habitation shall be used to house domestic animals. In her opinion based on this alone the Board should not allow the accessory apartment. The applicant has no hardship. They should put the apartment in the basement of the house or garage. The house is over 3,000 square feet, the basement is huge, and the garage can hold six vehicles. Code Section 170-11-3-d talks about usable acres which they don't have. Supposedly they are only going to have 4 horses, that could change if they don't have enough usable acreage for 4 horses. Mrs. Humphreys also feels that putting horses in the front yard doesn't give them protection.

Mike Pacella of 10 Highview Terrace addressed the Board. He was a police officer for 47 years, 20 in New York City and 27 in Somers. It is time to "nip it in the bud". Everyone is getting off track. The application is for an apartment and if the Board allows them to have it they are going to start running a business. Mr. Pacella wants to keep the community beautiful.

Chairman Cannistra confirmed with Mr. Allen that septic and well permits have been issued by the Westchester County Department of Health for the accessory apartment.

Ms. Choquette told the Board that they could not put an apartment in the basement because the steel beams would bring the height too low.

Mr. Santaroni said he is not ready to decide and would like to visit the property.

Town Attorney Reilly said this is a Type II Action. The conditions have to be related to the land, not the people. Regardless of whether the Special Exception Use Permit and Area Variance are granted, all of the other issues have to go before the Building Inspector and Town Engineer. If the applicant is granted their request it will be pending the issuance of a Building Permit for the barn.

Mr. Allen confirmed that perk hole tests have been done for the septic for the accessory apartment. The Board does have the right to tell the applicant the apartment can only be used for family and workers, and may not collect rent.

Mr. Carpaneto too is not ready to decide and would like arrangements for a site visit.

Mr. Newman asked Mr. Reilly about the Code Section 170-69-2. Mr. Reilly responded that the Board has to make a reasonable interpretation of what it means.

Mr. Allen reminded the Board that it is common to have an accessory apartment over a barn.

Mr. Guyot would like to have an opportunity to visit the property, but is prepared to vote if that is the general consensus.

Ms. D'Ippolito feels that the public hearing should be closed this evening.

Chairman Cannistra, Mr. Guyot, Mr. Harden and Mr. Newman are prepared to vote tonight if the others are in agreeance.

Mr. Harden made a motion to close the public hearing. Ms. D'Ippolito seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

| | |
|--------------------|-----|
| Mr. Carpaneto | Aye |
| Ms. D'Ippolito | Aye |
| Mr. Guyot | Aye |
| Mr. Harden | Aye |
| Mr. Newman | Aye |
| Mr. Santaroni | Aye |
| Chairman Cannistra | Aye |

The motion passed and the public hearing was closed.

Mrs. Schirmer will work with the applicant on arranging a site visit.

Chairman Cannistra adjourned the application to November 20, 2018, which will allow the Board members time to review the documents and drive through the neighborhood. Only the Board members will be part of the site visit.

Mary Theresa Benson of 13 Annarock Drive is curious as to why the application discussion is continuing if they don't end up getting a permit to built the barn. Chairman Cannistra responded that the barn is as of right.

OTHER BUSINESS:

A motion was made by the Chairman to approve the minutes of the September 11, 2018 meeting. All were in favor.

The next monthly meeting of the Zoning Board of Appeals will be held on November 20, 2018 at 7:30 p.m. There being no further business, the meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board