Minutes
Town of New Scotland
Zoning Board of Appeals

April 23, 2019
7:00 PM

Zoning Board Members:
Jeff Baker, Chairman,
Lance Moore, Steve Crookes, Edie Abrams, Bridgit Burke,
Lori Saba, Planning Board Secretary, Jeremy Cramer, Building Inspector
Crystal Peck, Zoning Board Attorney, Garrett Frueh, Town Engineer (Stantec Engineering)

Public Hearing 7:00 pm

1) Variance Application # 531: Application submitted by Tommell Livestock LLC requesting an appeal of determination for a violation given by the Building Inspector. The applicant would like the ZBA to determine if the use of a parcel for storage of commercial equipment is allowed. The parcel is located in the RA Zoning District, at 27 Upper Flat Rock Road, and is identified as New Scotland Tax Parcel # 106.-1-29.10.

Mr. Baker opened up the meeting to the public.

Mr. Thomas Munroe, 33 Upper Flat Rock Rd., when they first started moving in there, their sons, I’m not sure when they first came around in buying the land they said they were going to put a mobile home in there to replace one that was broken down. I didn’t think too much of it at the time, but then they started bringing in another trailer. I don’t think it’s from the farm up on there. I thought they would grade it out and remove the one trailer. Well, of course, over a period of time this was not happening. They started bringing in dirt, they started filling in the drive thru there, and it’s an egress and ingress path that the Bullocks who use to have the corner lot allowed them to use that to get into their land locked area. I noticed town trucks coming in and out. I didn’t pay attention to it, but the applicants started bringing dirt to the back with dump trucks of dirt for the back. The applicants were doing a lot of this before 8:00 a.m. and some times in the evening hours. The applicants had some guy come over and start cutting trees by my border. My land borders Bullock’s land this other land is in the back of all that. I had to go out there and ask him to not cut my trees or bushes. He agreed to that, there wasn’t a problem. I noticed that I am collecting water in the back of my yard over in the corner and it was getting swampy there. The water use to run in back of my land over into Bullocks land down into the creek. I complained about it to the guys when I see them and they said they would put a culvert in, which they did, but I still have water. The topper was they are bringing all these trailers in there, and they are working at night, because they have lights on. My wife passed away back December 2018 and I’ve been taking care of her for the whole year, and there was a lot of irritation with all the noise. These dump trucks come in with the banging noises. I talked to one of the fellows and he said well we are only doing what we are supposed to do and I see it as a junk yard for trailers. My wife use to go on Zillow and she would see that our home was devaluing as time went on. I see the neighborhood not just my home but homes in the area is a devaluation of our homes. It is not a farm, it is a storage area. I don’t know why these two boys bought this land. They are not doing what they said they were going to do. I let it slide, but then when I got this letter in the mail regarding this area really upset me, because this is continuing on. I thought the Town was going to give them a violation.

Mr. Baker: The Town has given a notice of violation to the Tommel’s for doing exactly what you are saying. It is not allowed here. As is their right they have appealed that decision to us and asked us to rule that the activities that they are doing there are appropriate agricultural activities. Do you think those are agricultural activities on the property?
Mr. Munroe: Not to me, it’s just a storage spot. Go on the satellite you can see what they are doing, it’s a storage site. My house isn’t perfect. I wasn’t expecting a junkyard in the back. I built that house 46 years ago. We put an addition on the back. I wasn’t expecting that we were going to have something like that. I wasn’t happy with the trailer in the back, but I was fine when a young couple lived there, but then we had someone going in there doing drugs. I had to call the cops. I don’t want any of that stuff around. I don’t know what these boys are doing. I know they have places elsewhere. They have farms in different places. I don’t want trouble with them. I’m here to complain. I’m not want to be mean to anybody, I know they have rights just like I have rights.

Mr. Moore moved to close the public hearing and Ms. Burke seconded the motion; all in favor; motion so carried.

Vote: 5-0

Ms. Coreno, attorney for the Tommell’s, I would like to point out a few things, one is that at the last meeting and hearing before the Board there was several and Mr. Cramer is not here this evening. There was several other items that were brought up and I have heard them in the public comments tonight and I just wanted to reiterate the Notice of Violation appeal tonight is limited to, at least our reading of the violation and our appeal is limited to the storage of a trailer and various equipment, the feed trailer. I understand there are other concerns that have been brought up I’m just indicating that those were not cited for those, we aren’t here on those tonight. I understand the public hearing has gone a wide swath around that and the only thing we are asking for is a determination of whether or not as is in similar situated lots in the Town of New Scotland that when you have an agricultural business there are agricultural components to the equipment that is utilized that business in the RA district. That is what we are asking for. If there are other concern or other issues that Mr. Cramer raised in the last meeting I have had conversations with counsel for the Town and made ourselves available. Willing to go in and talk about those things, I would like to reiterate on behalf of my client that those issues aren’t in front of the Board and we have indicated a willingness to come forward to talk about them. I just feel like our appeal is limited and we would appreciate a consideration the Board on a basis too.

Ms. Abrams: Do we have a copy of the citation?

Mr. Baker: Yes. Ms. Coreno is correct the issue on the appeals here is whether there use of the property with the equipment and materials that are there does it qualify as an agricultural use. The other issues about dumping, there is an issue of whether there was grading without a storm water plan. Those are separate and will be considered by the Town. However, I do appreciate the comments from the public as to talking about how the property is used and the impact on them and their experience as neighbors whether they believe those activities qualify as an agricultural use. We are not ruling on issues that aren’t before us.

Ms. Abrams: So does the violation specifically specify which trucks?

Ms. Peck: No it speaks of commercial equipment.

Mr. Baker: It is ready to move to a decision and our question here is whether we uphold Mr. Cramer’s determination that this is an illegal use and the question as the applicant has given to use is that they are engaged in agricultural activity and this is an extension of that. It is being used as an agricultural activity. Is that a fair assessment?

Ms. Coreno: Yes it is for the appeal.

Mr. Baker: Last month I asked the applicant’s counsel if Tommel’s Livestock owns any other agricultural property in the Town of New Scotland and they do not. I tell you from my thinking, not sure how relevant that would have been anyway, I think if this was going to be considered, if we were going to give any consideration of being used as an agricultural use there would have to be an existing working farm adjacent to it, or at least practically adjacent to it. We are not faced with that situation. What we have is a business that I won’t question is in an agricultural related business, I think it is primarily transporting of livestock. It doesn’t matter none of it is occurring in the Town, there is no farm where there is agricultural activity in our town. This is being used as a storage area for trucks and equipment, a repair area for trucks and equipment and storage on other stuff. We do
not allow as a standalone use in the RA a trucking terminal, a parking lot, whatever you want to call it.

Ms. Abrams: So that is allowed as an accessory agricultural use?

Mr. Baker: No not really. It is not an accessory use. We have our standard uses you know uses that area allowed by permit are forest management, agricultural, single family homes.

Ms. Abrams: Is agricultural defined?

Ms. Peck: It is defined as a parcel of land of at least 7 acres used for cultivation, pasture or other customary agricultural or nursery purposes, including the display and sale of products raised on land owned or controlled by said party providing 50% or more of the products sold by said party are produced by said party and the raising of stock and poultry accept for hogs and pigs. That’s how that is defined in the code.

Ms. Abrams: So by that definition of what it said there is no agricultural use on that parcel.

Mr. Baker moved to deny the appeal and affirming the determination of the building inspector that this is an illegal use of the property and I will leave it to the building inspector to deal with any necessary enforcement. Ms. Abrams seconded the motion; all in favor; motion so carried.

Vote: 5-0

2) **Adjourned: Variance Application # 530:** Application submitted by Tommell Livestock LLC as a two part application. The first part is to request an appeal of determination for a violation given by the Building Inspector that the use of the parcel as a commercial public garage is not a current allowed use for the parcel. The second part of the application is a request to “renew” a use variance previously granted for this parcel to allow for the operation and use as a public garage. The parcel is located in the RA district at 173 North Rd. and is identified as tax parcel # 105.-3-6.10.

**Variance Application # 532:** Application Submitted by Stewart’s Corporation requesting relief from Article II, Section 190-16 (B) of the Town of New Scotland’s Zoning Law to allow for a new building to be constructed within the front and rear setbacks on a parcel. The parcel is located within the “CH” district at 1360 Indian Fields Road. The parcel is owned by the Stewart’s Corporation, is identified as New Scotland Tax parcel id # 107.2-2-58. The “CH” district has a front and rear setback of 30 feet. This request is for 26 feet of front setback relief to allow for the fuel canopy to be located within 4’ of the front property line and for 19’ of rear setback relief to allow for the new store to be located 11 feet from the rear property line. This application also requests 13’ of relief for the sign to be located 2 feet from the front property line.

1) Mr. Baker decided to make this a Type II action for SEQRA. Moved to schedule a public hearing with the Planning Board on May 7, 2019 and then back to the Zoning Board of Appeals on May 21, 2019.

**Regular Meeting:**
Discussion/Action minutes of March 26, 2019: Will vote on the minutes at the next meeting.

**THE NEXT TENATIVELY SCHEDULED MEETING May 21, 2019**

Respectfully submitted,

Lori Saba